TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 344 54

THE ST. PAUL AND PACIFIC RAILROAD COMPANY; JACOB S. WETMORE, THOMAS DENNY, AND THOMAS W. PEARSALL, TRUSTEES, &c., AND THE ST. PAUL, MINNEAPOLIS, AND MANITOBA RAILWAY COMPANY, APPELLANTS,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED JUNE 27, 1887.

It cannot be said, therefore, as asserted in the present motion, that there was no issue between James C. Anderson and the complainant, who is appellee here.

IV.

If the further consideration of the motion is not postponed, conformably to the request above made, until the hearing on the merits, it is respectfully submitted that the motion should be overruled.

J. Hubley Ashton,
Of Counsel for Appellants.

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1 United States Circuit Court, District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, Horace Thompson, George L. Becker, and William G. Moorhead, Trustees, } Original Bill.

and

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY. } Supplemental Bill.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, of the December term of said court, held in the city of St. Paul, in
2 said district, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the 111th year.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 1st day of June, A. D. 1875, came the complainant above named, by Geo. Gray, Esq., its solicitor and of counsel, and filed in the clerk's office of said court its return from the Clay county district court in the words and figures following, to wit:

3 STATE OF MINNESOTA, *County of Clay:*

District Court, Eleventh Judicial District.

THE NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff,
against
THE ST. PAUL AND PACIFIC RAILROAD COMPANY and HORACE Thompson, George L. Becker, and William G. Moorhead, Trustees, and the Hon. George P. Wilson, Attorney General of the State of Minnesota.

The plaintiff above named, complaining of the defendant, alleges:

I. That the plaintiff is a corporation created by and existing under an act of the Congress of the United States entitled "An act granting lands to aid in the construction of a railroad and telegraph line from (fol. 2) Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2nd, 1864.

4 II. That the defendant, The St. Paul & Pacific Railroad Company, is a corporation created by and existing under the laws of the State of Minnesota, hereinafter particularly mentioned, and the said defendants, Horace Thompson, George L. Becker, and William G. Moorhead, are trustees named in a certain mortgage made by the last-named corporation and bearing date the first day

of April, 1871, whereby said corporation conveyed by way of mortgage to the said trustees all the right, title, and (fol. 3) interest it then had or might thereafter acquire in the lands in the State of Minnesota granted to the former Territory and present State of Minnesota by certain acts of Congress and which had been granted or should or might be granted by said State to aid in the construction of the lines of railroad of the said Saint Paul and Pacific Railroad Company in trust and upon the conditions in said mortgage declared.

5 III. That by section three of the act of Congress aforesaid there was granted to the plaintiff, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the (fol. 14) Pacific coast and secure the safe and speedy transportation of the mails, troops, munition of war, and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by the odd numbers to the amount of ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road would be definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time (fol. 5) any of said sections or parts of

6 sections could have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands should be selected by the plaintiff in lieu thereof under the direction of the Secretary of the Interior in alternate sections and designated by odd numbers not more than ten miles beyond the limits of said alternate sections.

IV. That by section six of said act of Congress it was further enacted that the President of the United States should cause the lands to be surveyed for forty miles in width on both sides of the entire line of said railroad after the general route (fol. 6) should be fixed and as fast as required for the construction of said railroad, and the odd section of land thereby granted should not be liable to sale, entry, or pre-emption before or after survey except by the plaintiff, as provided in said act.

V. That the plaintiff fixed the general route of said railroad in the year 1869, and filed a map or plat of said general route,

7 approved by the Secretary of the Interior, in the office of the *Commissioner of Patents* Commissioner of the General Land Office on the 13th day of August, A. D. 1870, and thereupon the Secretary of the Interior ordered the withdrawal of lands for twenty miles on each side of said line (fol. 7) for the benefit of the plaintiff; that plaintiff amended its line of general route and filed a corrected map thereof, approved by the Secretary — the Interior, in said General Land Office on the 8th day of October, A. D. 1870, and on the 12th day of the same month the Secretary of the Interior ordered a withdrawal of lands to conform thereto; that plaintiff proceeded with the work of definite location of said railroad and

definitely fixed the line thereof, and on the twenty-first day of November, 1871, filed a map or plat of the line so definitely fixed, also approved by the Secretary of the Interior, in the office of the Commissioner of the General Land Office, and the plaintiff constructed and equipped said railroad through the State of Minnesota in all respects as a first-class railroad, and has ever since operated
8 and maintained the same on said line of definite location as indicated and laid down on said map or plat on the 21st day of November, 1871, and said railroad was accepted and approved by the President of the United States in accordance with the provisions of section four of the said act of Congress approved July 2nd, 1864.

VI. That by a joint resolution of Congress approved May 31, 1870, being public resolution No. 44, it was resolved and provided that in the event of there not being in any State or Territory in which the said railroad is (fol. 9) located at the time of its final location the amount of lands per mile granted by Congress to the plaintiff within the limits prescribed by its charter, then the plaintiff should be entitled, under the direction of the Secretary of the Interior, to receive so many sections of land belonging to the United States and designated by odd numbers in such State or Ter-
9 ritory within ten miles on each side of said road beyond the limits prescribed in said charter as would make up the deficiency to the amount of the lands that had been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of said act of July 2nd, 1864 (fol. 10).

VII. That after the filing of the respective maps or plats aforesaid of the general route of said railroad in the office of the Commissioner of the General Land Office, and so soon as that officer had prepared and made maps and records of the General Land Office showing and designating the several limits of the lands granted to or reserved for the plaintiff in respect to the said lines of the general route of said railroad, he issued to the register and receiver of the local land office of the United States at St. Cloud and Alexandria, in the State of Minnesota, within which district all the lands hereinafter mentioned were then situate, letters of instruc-
10 tions dated respectively (fol. 11) September 15th and November 7th, 1870, together with diagrams showing the line of the general route of said railroad through said district and the limits of the granted lands in respect thereto, according to the terms and provisions of the said act of Congress ordering and directing the withdrawal of all the odd-numbered sections within said limits from sale or location, pre-emption or homestead entry.

VIII. That upon the fixing of the general route of said railroad as aforesaid and according to the provisions of section six of said act of Congress no odd section or any part of an odd section of the lands for forty miles in width on both sides of the entire line of the general (fol. 12) route of said railroad could thereafter be disposed of except by the plaintiff, but the odd sections and parts of odd sections within said limits of forty miles on both sides of said gen-

eral route which had not been previously reserved or dis-
11 posed of were thenceforth reserved, appropriated, and set apart for the purpose of preserving for and securing to the plaintiff, so far as possible, the entire quantity of lands granted by Congress as aforesaid to aid in the construction of said railroad and telegraph line.

IX. That upon the filing of the plaintiff of a map — a plat of the line of said road as definitely fixed in the office of the Commissioner of the General Land Office on the 21st day of November (fol. 13), 1871, as aforesaid, that officer made and designated upon the maps and records of said office the limits of the lands granted by Congress to the plaintiff according to the terms and provisions of the charter of the plaintiff and the joint resolution aforesaid, viz., the twenty, thirty, and forty miles limits on each side of said line of definite location, the first named being the limits of the lands in place, the second the limits of the indemnity lands provided in said
12 act of July 2nd, 1864, and the third, or forty miles, being the limits of the further indemnity lands granted by said joint resolution of May 31st, 1870; and there was not in said State of Minnesota at the time of the final location of said railroad as aforesaid, including all the lands hereinafter (fol. 14) described, the amount of lands per mile granted by Congress to the plaintiff within the limits prescribed by its charter, viz., the said act of Congress approved July 2nd, 1864, nor was there then nor is there now in said State of Minnesota, including all the lands hereinafter mentioned and described within the said forty-mile limit on each side of said railroad, that amount of lands per mile not granted, sold, occupied by homestead settlers, pre-empted, or otherwise disposed of; and all the odd-numbered sections and parts of sections between the aforesaid limits of thirty and forty miles on each side of said railroad in the State of Minnesota not sold, occupied by homestead
13 settlers, or pre-empted (fol. 15) at and previous to the definite location of said road and the filing of the plat thereof in the office of the Commissioner of the General Land Office, as aforesaid, will be and are required and are not sufficient to make up the deficiency of the lands in place granted by Congress to the plaintiff as aforesaid to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of in said State subsequent to the passage of the act of July 2nd, 1864.

X. That by the said act and joint resolution of Congress the plaintiff is equitably entitled to and (fol. 16) is the equitable owner of and of right and in equity ought to have the legal estate and title in and to all the odd-numbered sections and parts of sections of the public lands in the State of Minnesota lying and being west of the tier of townships in range thirty-two west of the fifth
14 principal meridian, and within lines drawn on each side of said railroad at the distance of twenty miles therefrom, as near as may be, so as to conform to the nearest boundaries of the legal subdivision of the public lands, according to the Government survey and the designation of said limits made as aforesaid by the

Commissioner of the General Land Office (fol. 17); and also all the lands in said State in alternate sections and parts of sections designated by odd numbers, west of said tier of townships and between the said twenty and forty mile limits on each side of said railroad, made and designated as aforesaid by the Commissioner of the General Land Office, and so as to conform to the legal subdivisions of the public lands, as indemnity for the said lands in places otherwise disposed of, subject to the passage of the said act of Congress approved July 2nd, 1864; and all the lands hereinafter particularly mentioned and described, by reference to the schedule thereof hereto annexed, are embraced and contained (fol. 18) — the boundaries aforesaid, and are part of the said lands in alternate sections
15 and parts of sections designated by odd numbers, of which the plaintiff is the equitable owner, and to which and the legal estate and title therein and thereto the plaintiff is equitably and of right entitled under said act and joint resolution of Congress, as hereinbefore set forth and alleged.

XI. That by section one of an act of Congress entitled "An act making a grant of land to the Territorry of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in (fol. 19) alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3rd, 1857, there was granted to the Territory of Minnesota, for the purpose of aiding in the construction of certain railroads therein specified, one of which was a railroad from Stillwater by way of Saint Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of
16 the Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory might determine, every alternate section of land (fol. 20) designated by odd numbers for six sections in width on each side of said roads and branches, and wherein it was provided that the said Territory or future State might select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest the tiers of sections above specified so much land in alternate sections or parts of sections as should be equal to such of the said granted lands as the United States would have sold or appropriated or to which the rights of pre-emption attached when the lines or routes of said roads and branches were definitely fixed; and wherein it was further provided that the land to be so located should in (fol. 21) no case be further than fifteen miles from the lines of said roads
17 and branches and selected for and on account of each of said roads and branches.

XII. That by an act of the Legislative Assembly of the Territory of Minnesota approved May 22nd, 1857, entitled "An act to execute the trust created by an act of Congress entitled An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State, and

granting lands to railroad companies therein named," the Minnesota and Pacific Railroad Company was made and created a corporation for the purpose of constructing, operating, and maintaining the railroad and branch last above mentioned, viz., a railroad from
Stillwater, by way of St. Paul and St. Anthony, via Minne-
18 apolis, to the town of Breckenridge, on the Sioux Wood river,
with a branch from St. Anthony via St. Cloud and Crow Wing to St. Vincent, near the mouth of the Pembina river, and for the purpose of aiding in the construction of said railroad and branch all the interest of said Territory (fol. 23) or future State in or to the lands granted by the United States as aforesaid to aid in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, agreeably to the terms of the act of Congress aforesaid approved March 3rd, 1857, was by said act of the Legislative Assembly of the Territory of Minnesota granted to said Minnesota and Pacific Railroad Company. The seventeenth section of the act required the
company to report to the Governor of said State from time to
19 time the location (fol. 24) and designation of the route and
line of the railroad and branch as fast — the same should be definitely located and established.

XXII. That subsequently the said Minnesota and Pacific Railroad Company, by a trust deed or mortgage bearing date the 31st day of July, 1858, executed under its corporate seal, granted and conveyed by way of mortgage to the trustees therein named the said railroad from Stillwater to Breckenridge and branch from St. Anthony via Anoka, St. Cloud, and Crow Wing to St. Vincent, with all the alienable franchises of said last-named corporation and all the right, title, interest, claim, or demand which it then had or might thereafter acquire in or to the lands granted to the Territory of Minnesota by the said act of Congress approved March 3rd, 1857, for the purpose of aiding in the construction of said railroad and branch, to secure the payment of an issue of bonds intended to be
issued by the said Minnesota and Pacific Railroad Company.
20 That the State of Minnesota, having become the owner and
holder of several of the said bonds, amounting to about six hundred thousand dollars, caused the said mortgage to be foreclosed under the power of sale therein contained, and became the purchaser of the said mortgaged railroad franchise (fol. 26), lands, and premises on the 23rd day of June, 1860, at and for the sum and price of one thousand dollars, and subsequently the said Minnesota and Pacific Railroad Company, by its deed executed by the Honorable Alexander Ramsey, Governor of said State of Minnesota, as the attorney-in-fact of said last-named corporation, and bearing date the sixteenth day of October, 1860, granted, conveyed, and assigned to the said State of Minnesota all right and equity of redemption of said corporation in and to the said mortgaged property, rights, privileges, and franchises, as described in said trust deed or mortgage (fol. 27) dated the 31st day of July, 1858.

21 XIV. That — the Legislature of said State of Minnesota, by an act entitled "An act to facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, it was enacted that all the rights, benefits, privileges, property, franchises, and interests of the Minnesota and Pacific Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, agreement, or thing by the said company theretofore done or suffered (meaning the last-mentioned trust (fol. 28) deed or mortgage) and the said conveyance of the equity of redemption or by virtue of any law of the State or the constitution thereof or of the former Territory of Minnesota or by reason of any sale of the same or any part thereof by the Governor of the State on the 23rd day of June, 1860, and bid in and purchased for the benefit of the State, be, and the same were thereby, granted to certain persons therein named, their
22 associates and successors, on the terms and conditions in said act provided. By section two of said last-named act all the rights, privileges, franchises, lands, property (fol. 29), and interests granted by the Territory of Minnesota to the Minnesota and Pacific Railroad Company by the aforementioned act of said Territory, approved May 22nd, 1857, were purported to be continued and granted to and vested in the said persons named in the said act, and by said section two of said act, approved March 10th, 1862, it was further enacted that the said persons therein named and their associates and successors should thereafter be known as the Saint Paul and Pacific Railroad Company, and by that name may sue and be sued and have and exercise all the powers, rights, and privileges (fol. 30) which theretofore pertained to the said The Minnesota and Pacific Railroad Company. By section six of the same act, for the purpose of aiding in the construction of the Saint Paul and Pacific
23 railroad and the branch thereof, all the interest of the State, present and prospective, in and to any and all the lands granted by Congress to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, with a branch via St. Cloud and Crow Wing (fol. 31) to the navigable waters of the Red River of the North, agreeably to the terms of the said act of Congress approved March 3, 1857, were granted to the said St. Paul and Pacific Railroad Company, conditioned that said land be applied to the construction and equipment of said road and for no other purpose whatever.

XV. That Congress passed a joint resolution entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State and for other purposes,"
24 approved July 12, 1862, as follows: "Whereas by an act of Congress approved March 3rd, 1857, there (fol. 32) was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater via St. Cloud and St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the

navigable waters of the Red River of the North, the northwestern terminus of which was fixed by the Legislature of said Territory at St. Vincent; and whereas it is now believed that the public interests require a change of location of a part of said branch road: (Fol. 33.) Therefore be it resolved, etc., That, in lieu of that part of the railroad grant to Minnesota Territory by act of Congress March 3rd, 1857, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the
25 alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing and extending in a northeasterly direction (fol. 34) to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided this resolution take effect from the filing in the General Land Office of the acceptance by the authorities of such substitution. Whereupon the land north of the intersection aforesaid in the grant as authorized by the said act of March 3rd, 1857, being by the said acceptance disencumbered of the railroad grant, shall be dealt with as other public lands of the United States.

XVI. That the State of Minnesota, by an act of the Legislature approved (fol. 35) March 6th, 1863, whereof a copy, duly authenticated under the seal of said State, was filed by the Governor
26 in the General Land Office on the 26th day of February, 1864, accepted the said substitution of lands according to the provisions of the said joint resolution of July 12th, 1862, and designated the route of such new branch line; and by section two of the same act authorized the St. Paul and Pacific Railroad Company to construct and operate said new branch railroad, having its southwestern terminus at or above some point opposite the town of St. Cloud, upon the then existing branch of the St. Paul and Pacific railroad (fol. 36), and extending thence in a northeasterly direction by such route as they might select to the navigable waters of Lake Superior, at or near the mouth of Pigeon river, by way of Duluth; and by said section two of the act last aforesaid it was further enacted that the said St. Paul and Pacific Railroad Company should be entitled to have, receive, and hold, and there was thereby granted to it, all the lands, benefits, and privileges granted and conferred upon the State of Minnesota in and by said joint resolution of Congress,
27 provided and upon the express condition that the grants and franchises thereby conferred should in nowise inure to the line of road then located or constructed or thereafter to be located or constucted under the powers of the act of incorporation of the said St. Paul and Pacific Railroad Company.

XVII. That by operation of the said joint resolution of Congress approved July 12, 1862, and said act of the Legislature of the State of Minnesota approved March 6, 1863, and the acceptance of the provisions thereof by the said St. Paul and Pacific Railroad Company, as hereinafter stated, all lands granted by Congress to the Territory or State of Minnesota pertaining to and (fol. 28) for the

purpose of aiding in the construction of the said branch railroad from the intersection of the tenth standard parallel with the fourth guide meridian to St. Vincent, on the Red River of the North,
28 reverted to the United States and again became a part of the public domain, to be dealt with as the other public lands of the United States, free of and clear from any grant, reservation, appropriation, or other disposition thereof theretofore made.

XVIII. That by the 8th section of an act of the Legislature of said State entitled "An act to amend the charter (fol. 39) of the St. Paul and Pacific Railroad Company," approved February 6th, 1864, the said company was authorized and empowered to construct, maintain, and operate its said new branch railroad from some point at or above St. Cloud to the westerly end of Lake Superior, and for that purpose to have and exercise all the rights, immunities, privileges, and franchises conferred in and by its charter and which are applicable to any other portion of its road or branch; by which enactment the northeasterly terminus of said branch was changed from (fol. 40) the mouth of the Pigeon river to the westerly
29 end of Lake Superior, and the corporate power and franchises granted to the said company by its charter were extended to said new branch railroad. Although the land grant applicable to the said branch road from St. Cloud by the way of Crow Wing to St. Vincent was withdrawn by said joint resolution of Congress of July 12th, 1862, and said act of the Legislature of Minnesota of March 6th, 1863, north of the 10th standard parallel and west of the fourth guide meridian, yet the right to construct and operate the railroad from St. Vincent (fol. 41) remained; and said point of intersection, being the northwest corner of township one hundred and forty, range 31, was and continued to be a point in the line of said railroad as authorized by said joint resolution of July 12, 1862, and by the Legislature of Minnesota in an act entitled "An ac tto aid and facilitate the completion of the St. Paul and Pacific railroad and branches," approved March 2nd, 1865, wherein the ilne is
30 named "a line from St. Cloud in a northerly direction to St. Vincent."

XIX. That by an act of Legislature of said State entitled "An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company" (fol. 42), approved March 4, 1864, the time for the completion of said new branch road to the westerly end of Lake Superior, as limited and prescribed in and by said act of March 6, 1863, was extended one year, provided and on condition that the said St. Paul and Pacific Railroad Company should, within eight months, accept the terms and conditions of said act of March 6, 1863, and of the said joint resolution of Congress approved July 12, 1862, and said company, by a resolution of its board of directors, on the 28th day of May, 1864, duly accepted said terms and provisions, and on the same day (fol. 43) filed its acceptance thereof with the Governor of said State; and the
31 plaintiff alleges that upon the filing of the acceptance by the authorities of the State of the substitution aforesaid in the General Land Office on the 26th day of February, 1864, all the lands

that had been granted to said State to aid in the construction of said railroad to the Red River of the North lying west of the fourth guide meridian reverted to the United States, as before shown. On the fourteenth day of November, A. D. eighteen hundred and sixty-four, the said St. Paul and Pacific Railroad Company adopted a resolution still further affirming said substitution of grants as follows: Resolved, That there be created and issued under and pursuant to said act twenty (fol. forty-four) thousand shares, two million dollars, of special and preferred stock upon the branch railroad of their company to Lake Superior, which their company is authorized to construct and maintain by virtue of an act of the Legislature of the State of Minnesota entitled, etc., approved March 6, 1863, and the said reversion to the United States was fully consummated
32 before the passage of the plaintiff's charter, July 2, 1864, at which date no grant whatever existed of any of the lands hereinafter mentioned or any lands to aid in the construction of the said St. Vincent Extension west of the fourth guide meridian (fol. forty-five), but the same and every part thereof were then, July 2nd, 1864, free of and clear from all and every grant, reservation, or appropriation made by Congress or any authority of the United States, and were subject to be dealt with as the other public lands; and in fact no part of the lands hereinafter mentioned and particularly described in the schedule of lands hereto annexed had ever been granted or appropriated or in any manner disposed of to or for any person or persons, body or bodies corporate and politic, or otherwise in any manner or for any purpose previous to the passage of said act of Congress of July 2, 1864, by which the same were
33 granted (fol. forty-six) to the plaintiff for the uses and purposes and upon the consideration therein expressed.

XX. That by an act of Congress entitled "An act extending the time for the completion of certain railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, 1865, the quantity of lands granted to the State of Minnesota by the act of March 3, 1857, was increased to ten sections per mile for each of the railroads and branches in said last-mentioned act described, subject to any and all limitations contained in said act of March 3rd, 1857, and subsequent acts and as thereafter provided in said act of March 3rd, 1865, and thereby also the limits (fol. 47) of the indemnity lands were extended to twenty miles from the line of the roads. By section third of said last-named act of Congress it was further enacted "that any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by compe-
34 tent authority for the purpose of aiding in any object of internal improvement or other purpose whatever be, and the same are hereby, reserved and excepted from the operation of this act, except so far as may be found necessary to locate the route of said road through such reserved lands, in which case the right of way shall be granted subject to the approval of the President of the United States (fol. forty-eight).

XXI. That the lands hereinafter specified and particularly described in the schedule of lands hereto annexed had been, before

the passage of said act of Congress approved March 3rd, 1865, reserved by Congress for the purpose of aiding in an object of internal improvement by the act aforesaid approved July 2nd, 1864, viz., for the purpose of aiding in the construction of said railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route, and were reserved and excepted from the operation of said act of March 3rd, 1865.

35 XXII. That by said last-mentioned act, March 3, 1865, section seven (fol. forty-nine), it was made the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of said act as soon as the Governor of said State of Minnesota should file or caused to be filed *with* maps designating the routes of said roads and branches; and by section nine of said act it was further enacted that the provisions thereof shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the aforesaid joint resolution approved July 12, 1862, notwithstanding the vacation thereof by said State, as though said joint resolution (fol. 50) had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated.

XXIII. That by an act of Congress entitled "An act relating to lands granted to the State of Minnesota to aid in construct-

36 ing railroads, approved July 13, 1866, section one, it was enacted 'that wherever it shall appear that the United States have sold or disposed of any lands granted to the Territory or State of Minnesota for the purpose of aiding in the construction of railroads, after the definite location of the line of road and before the withdrawal of said lands from sale at the proper local land office, said State may, by (fol. 51) its agent, select, in lieu of the lands so sold or disposed of, from any of the lands of the United States subject to sale, being odd-numbered sections, within twenty miles of the line of the proper road, a quantity of land equal to that so sold or disposed of by said State in all respects as if said substituted lands had been parcel of the original grant to the State.'"

XXIV. That by the aforesaid act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company" (fol. 52), approved February 6, 1864, the said St. Paul and Pacific Railroad Company was

37 empowered to issue preferred and special stock on any portion of its railroad and to make arrangements with the holders of such stock for the administration of such portion of said railroad and for separate organization to exercise, in respect to that portion of the road — which such special stock pertained, all the powers of the company; and thereupon such proceedings were had; that a separate organization was so made in respect to that portion of said railroad extending from St. Paul and St. Anthony (fol. 53) to Breckenridge, with a branch from St. Anthony to Watab, in the county of Benton, which organization became and was, under and in pursuance of the laws of the former Territory and present State of Minnesota, a corporation by the corporate name of First Division of the St. Paul and Pacific Railroad Company, and the other and remaining

portion or parts of said railroad or branches thereof remained
38 to the said St. Paul and Pacific Railroad Company, and said last two mentioned corporations were and are entirely distinct and separate organizations and corporations to all (fol. 54) intents and purposes whatever.

XXV. That by section two of an act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved March 2nd, 1867, it was provided "that if twenty miles of said road, extending from Lake Superior to a point at or above St. Cloud, shall not have been put into operation, with the cars running thereon, by the 2nd day of March, 1870, the lands appertaining thereto shall revert and be passed over to the Minneapolis and St. Cloud Railroad Company;" and by section three (fol. 55) it was enacted that the same should be deemed and held to be a public act and take effect from its passage.

The Minneapolis and St. Cloud Railroad Company was also
39 a corporation created and existing under the laws of the State of Minnesota and authorized by its charter to locate, construct, operate, and maintain a railroad within the State of Minnesota from St. Cloud to the westerly end of Lake Superior, and had the power to take, receive, and enjoy the said grant of lands applicable to the construction of a railroad between said termini in accordance with the said joint resolution of Congress approved July 12th, 1862.

XXVI. That the said St. Paul and Pacific Railroad Company never constructed any part of said branch railroad to Lake Superior or any part of said branch railroad from St. Cloud to the intersection of the tenth standard parallel with the fourth guide meridian or to St. Vincent, except as hereinafter stated; and for several years, including the years 1865, 1866, 1867, and 1868, the said St. Paul and Pacific Railroad Company entirely abandoned the said branch road from St. Cloud to St. Vincent, and, as the plaintiff is in-
40 formed and believes (fol. 57), during those years neither made any attempt nor had any intention to construct the same or any portion thereof. The abandonment of said last-named branch railroad was so notorious and so well and fully was it recognized and established that the Legislature of the State of Minnesota, by an act entitled "An act to authorize the First Division of the St. Paul and Pacific Railroad Company to extend its branch line from St. Cloud, via Sauk Centre and Alexandria, to the Red River of the North," approved March 6th, 1869, enacted as follows:

SECTION 1. "That the First Division of the St. (fol. 58) Paul and Pacific Railroad Company is hereby authorized to survey, locate, and construct a branch railroad from St. Cloud, via Sauk Centre and Alexandria, to some point on the Red River of the North to be by said company designated;" which act was amended by an act of the Legislature approved March 3, 1870, so as to designate the route of said branch railroad from St. Cloud, via Sauk Cen-
41 tre, Osakis, and Alexandria, to some point on the Red River of the North; and the said points and places named and designated in said last-mentioned act of the Legislature are points and places (fol. 59) on the line of railroad long afterwards located and

partly constructed by the said St. Paul and Pacific Railroad Company, as hereinafter stated.

XXVII. That at the time of the passage of the said joint resolution of Congress, approved July 12, 1862, the location of said branch railroad from St. Cloud and Crow Wing to the Red River of the North at St. Vincent was fixed and established according to law so as to run through the point of intersection of the tenth standard parallel with the fourth guide meridian (fol. 60), said point being the northwest corner of township one hundred and forty north, range thirty-one west, of the fifth principal meridian, and which point is east of a direct line from Crow Wing to St. Vincent.

42 The line or location of said railroad was not authorized or permitted to be changed from said point of intersection, either expressly or by implication on the part of Congress or any authority of the United States, until, as it is claimed by the said St. Paul and Pacific Railroad Company, it was by the act of Congress approved March 3rd, 1871, hereinafter named and referred to.

XXVIII. That in the year 1869 (fol. 61) at and soon after the time when the plaintiff fixed the general route of the said railroad through the State of Minnesota, as hereinbefore stated, the said St. Paul and Pacific Railroad Company, desiring to obtain the benefit and advantage of a connection with the said Northern Pacific railroad, or desiring or expecting to receive some other advantage thereby, commenced the location of its said branch road westerly from Crow Wing and in the same general direction as that of the Northern Pacific railroad, and in the months of August and

43 September, 1869, did actually locate upon the ground (fol. 62) and afterwards by resolution did definitely fix the line of its said branch railroad, commencing at Crow Wing and running almost directly west between Otter Tail and Rush Lakes, and thence on a course a little west of north to a point in or near the center of the east line of township one hundred and forty-two, between ranges forty-one and forty-two, on the south branch of the Wild Rice river, in the northern part of Becker county, then following for the greater portion of said located and definitely fixed line the general direction of the route of the plaintiff's railroad; and the board of directors of the (fol. 63) St. Paul and Pacific Railroad Company, on the thirteenth day of October, 1869, adopted the said location by the following resolution: "Resolved that the survey and location of the line of the St. Paul and Pacific railroad from Crow Wing to the

44 northern boundary of Becker county, in the State of Minnesota, heretofore made under the direction of D. C. Sheppard, engineer of said company, and laid down and shown upon a map of such survey and location, be, and the same is hereby, ratified, confirmed, and adopted as the location of the line of said railroad from Crow Wing to the center of the tier of townships numbered one hundred (fol. 64) and forty-two, and the president and chief engineer are hereby directed to file said map with the Governor of the State and provide him with a duplicate thereof, to be filed with the Secretary of the Interior."

Said maps were so filed accordingly on or about the 1st day of November, 1869, but the Secretary of the Interior refused to approve the same for the reason that the location was not by the way of the intersection of the 10th standard parallel with the fourth guide meridian, in which latter case it would have been nearly at
45 right angles (fol. 65) with that of the Northern Pacific railroad; and such point of intersection is more than sixty miles from the point of intersection of said branch line, as located by the board of directors of said St. Paul and Pacific Railroad Company, with the said general route of plaintiff's railroad, and is ninety miles east of the present actual crossing of said last-mentioned two roads.

XXIX. That the said St. Paul and Pacific Railroad Company made no further attempt to locate said branch railroad, but entirely and finally abandoned it, and never did any work (fol. 66) of construction thereon between Crow Wing and the Red River of the North, nor on construction work on its said branch from St. Cloud to Lake Superior or on any part thereof; and the Legislature of the State of Minnesota, by an act approved March 7, 1870, entitled "An act declaring a forfeiture of lands under an act entitled 'An
46 act to amend the charter of the St. Paul and Pacific Railroad Company,' approved March 2nd, 1867," after reciting the provision of section two of said act of March 2nd, 1867, and the fact that the said company therein (fol. 37) named had failed to comply and had in no manner complied with said provision, enacted by section one "that the lands appertaining to the said road, extending from Lake Superior to a point at or above St. Cloud, by reason of any grant made by the Congress of the United States or any law of this State or both, are hereby declared to be forfeited and lost to the said St. Paul and Pacific Railroad Company, and the said lands are hereby granted to the said Minneapolis and St. Cloud Railroad Company to aid in the (fol. 68) construction of their branch road extending from St. Cloud in the direction of Lake Superior under the provision of the charter of said last-named company."

XXX. That from and after the said seventh day of March,
47 1870, the said St. Paul and Pacific Railroad Company had no claim, right, or interest in or to any of the lands along or appertaining to the line of its said road — branch road from St. Cloud to Lake Superior, and either then or ever had no claim,
48 right, or interest in or — any lands whatever along the line of its said branch road from St. Cloud to the Red River of the North, as located from Crow Wing to St. Vincent by the way of Otter Tail or Rush Lake and the east line of township one hundred and forty-two north, and which was the only location that had then ever been made of the said branch road from Crow Wing to St. Vincent, nor had the said last-named company any inchoate inception, contingent or floating claim, right, or interest or shadow thereof in or to said lands or any part thereof which could ever under any circumstances possibly — ripened, be perfected, settle, or grow into any title legal or equitable.

XXXI. That on the 3rd day of March, 1871, Congress passed the

following act, approved that day and entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands;" "that the St.
49 Paul and Pacific Railroad Co. — to change its line in consideration of a relinquishment of lands;" "that the St. Paul and Pacific Railroad Company may so alter its branch lines that, instead of constructing a road from Crow Wing (fol. 71) to St. Vincent and from St. Cloud to the waters of Lake Superior, it may locate and construct in lieu thereof a line from Crow Wing to Brainerd to intersect with the Northern Pacific railroad and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lakes, so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines as is provided for the present lines (fol. 72) by existing laws: Provided, that the change shall in no manner enlarge said grant, and this act shall only take effect upon condition of being in accordance with the Legislature of the State of Minnesota, and upon further condition that proper release shall be made to the United States by said company of
50 all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to (fol. 73) market without further legislation."

That said act was not in accord with the legislation of the State of Minnesota for the reason that the granted lands along the line of the said railroad from St. Cloud to Lake Superior had been one year before granted by said State to the Minneapolis and St. Cloud Railroad Company, as hereinbefore stated, according to the provisions of the aforesaid acts of the Legislature of the State of Minnesota approved, respectively, March 2nd, 1867, and March 7, 1870; and at the time of the passage of said last-mentioned act of Congress of March (fol. 74) 3, 1871, the said acts of the Legislature of the State of Minnesota of March 2nd, 1867, and March 7, 1870, were and they still are in full force, not repealed, altered, or amended; and said act of Congress has not been and is not now in accord
51 with any legislation of said State made or adopted since the passage of said act, for the reason that by said act of Congress Otter Tail or Rush Lake was made an objective point in the line of said branch road, whereas the Legislature of said State has made Sauk Centre, Osakis, Alexandria, and Fergus Falls objective points (fol. 75), then fixing and compelling a line which could not possibly run by or near said Otter Tail or Rush Lake, as will hereafter fully appear.

XXXII. That after the passage of said act of Congress of March 3, 1871, no legislation was made or adopted by the Legislature or action taken by any of the authorities of said State in regard to said St. Paul and Pacific Railroad Company or its railroad or the lands granted as aforesaid until more than two years had elapsed, when the Legislature of said State passed an act entitled "An act to ex-

tend the time for the completion of certain branch lines of
52 railroad of the St. Paul and Pacific (fol. 76) Railroad Company," approved March 11, 1873, as follows: Sec. 1. "That the time for the grading and completion by the St. Paul and Pacific Railroad Company of its branch lines of railroad in accordance with the change in such branch lines authorized by an act of Congress of the United States passed March 3, 1871, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," be, and the same is hereby, extended to and until the (fol. 77) first day of January, 1874, and the said company so completing the said lines within the time in this act limited shall have and be entitled to the grant of lands in said act of Congress made and provided and to all and singular the same rights, privileges, immunities, lands, and property as if such line of railroad had been constructed and put in operation, equipped for business, within the time heretofore limited by law for the
53 same, provided that the branch line of said railroad running from St. Cloud to St. Vincent (fol. 78) shall run by Sauk Centre, Osakis, Alexandria, and Fergus Falls and Glyndon; and, as before alleged, this line, so imperatively and absolutely fixed by said provision in said last-cited act of the Legislature of the State of Minnesota as the line upon which said branch railroad must be constructed, was not the line of said railroad authorized by Congress in its said act approved March 3rd, 1871.

XXXIII. That from the year 1869 until the close of the year 1871 no line for said branch (fol. 79) railroad by any route from St. Cloud to St. Vincent was adopted by the said St. Paul and Pacific Railroad Company, and the matter and things in relation to said line and the fixing or adopting of the definite location thereof remained during all that time in the condition hereinbefore set forth, viz., a line of definite location existing by authority of law from Crow Wing
54 to the intersection of the tenth standard parallel with the fourth guide meridian; a line actually located upon the ground and adopted by said St. Paul and Pacific Railroad Company by resolution of its board of directors on the 13th day of October, 1869, hereinbefore set forth, and prior to said period an actual, total, and complete abandonment of all and every of said lines, both by the said last-named railroad company and the State of Minnesota, so far as relates to any attempt or intention on the part of the said St. Paul and Pacific Railroad Company to construct the same or any portion thereof, until after the plaintiff had fixed the general route of its railroad through the State of Minnesota.

(Fol. 81.) XXXIV. That on the 13th day of December, 1871, which was after the line of said plaintiff's railroad was definitely fixed and graded through the State of Minnesota, and for the greater part fully constructed and in operation, the said St. Paul and Pacific railroad, at a meeting of its board of directors held on the
55 day last aforesaid, adopted a resolution, of which the following is a copy: "Resolved, That the survey and location of the railroad of the company from St. Cloud to St. Vincent and from Crow Wing to Brainerd, made under the supervision of

Chas. F. Morris, chief engineer, be, and the same is hereby, approved and adopted, and that duplicate maps of such survey and location, heretofore certified by him and by the president and secretary of this company, dated, respectively, November seventh and November twenty-second, 1871, be placed in the hands of the Governor of the State of Minnesota and the Secretary of the Interior, in compliance with the laws applicable thereto, and that said engineer's report of such location be recorded upon the books of this company;" and the plaintiff alleges that it was by said resolution (fol. 83) of the said board of directors and by that only, and not by any act or thing done prior thereto, that any line or route of said branch road, commonly called the St. Vincent Extension of
56 the St. Paul and Pacific railroad, was definitely fixed after the passage of said act of Congress of March 3, 1871, and was the only line or route ever definitely fixed by said St. Paul and Pacific Railroad Company, save that located in the year 1869 by the way of Crow Wing, and running between Otter Tail and Rush Lakes to the east (fol. 84) line of township one hundred and forty-two. ranges forty-one and forty-two, as hereinbefore stated.

XXXV. That the said line so definitely fixed by the said resolution of the board of directors of the Saint Paul and Pacific Railroad Company December 13th, 1871, is not on any line authorized by Congress and is not the line on which said railroad is actually located on the ground and partially constructed; and said railroad, as actually located on the ground and partially constructed as hereinafter mentioned, is not on any line (fol. 85) authorized by
57 Congress or on the line determined and required by the Legislature of the State of Minnesota or on the line indicated by the said map or by any map filed with the Governor of said State or with the Secretary of the Interior by or on behalf of said last-named company.

XXXVI. That the board of directors of said St. Paul and Pacific Railroad Company, on the said 13th day of December, 1871, adopted a resolution which, after the recital of the aforesaid act of Congress approved March 3, 1871, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," and also reciting a former resolution of said board accepting the terms and provisions of said act, is in the following words:

"Now, therefore, know all men by these presents that the St. Paul and Pacific Railroad Company, in consideration of the prem-
58 ises, hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, not including, however, in this release any lands granted (fol. 87) by said act to said company along said new or altered lines."

Said release was, on the 9th day of December, 1871, filed with the Secretary of the Interior, and on the 20th day of the same month the map of the definite location of the St. Vincent Extension was filed in the office of the Commissioner of the General Land Office,

and not until the 6th day of February, 1872, were any lands ever "withdrawn" from sale or location, pre-emption, or homestead entry for or on account of said new line or any line of railroad of the now-existing corporation, the St. Paul and Pacific Railroad Company; on or after which (fol. 88) last-named day such withdrawal was made by or in pursuance of the order of the Commissioner
59 of the General Land Office made of that date to the register and receiver of the United States land office at Alexandria and St. Cloud, Minnesota, in accordance with the requirements of section seven of said act of Congress approved March 3, 1865.

XXXVII. That the said St. Paul and Pacific Railroad Company constructed or caused to be constructed certain portions and parts of a railroad extending from St. Cloud to St. Vincent, which line so partially constructed was adopted and fixed by the aforementioned company, the (fol. 89) First Division of the St. Paul and Pacific Railroad Company, or its agent, but not by the said St. Paul & Pacific Railroad Company, and was not the line or any line authorized or reorganized by Congress or by the Legislature of the State of Minnesota. The portions of said line so partially constructed are from St. Cloud to Melrose, in Stearns county, a dis-
60 tance of thirty-five miles, and, 2nd, from a point in section thirty-five (35), in township one hundred and thirty-eight (138), range forty-six (46), about twelve miles south of the Northern Pacific railroad, to a point in section seven (7), in township one hundred and fifty-four (154), range forty-seven (47), about ninety miles as said (fol. 90) road runs north of the Northern Pacific railroad; and the said First Division Railroad Company has operated said portion of said constructed railroad from St. Cloud to Melrose, but no other part of said railroad has ever been operated, except to a very limited extent, and that chiefly in connection with the work of construction, nor has any equipment ever been furnished therefor, and all work of construction on said railroad was entirely suspended and abandoned in 1872 and has never been resumed.

From Melrose to the said (fol. 91) point, about twelve miles
61 south of the Northern Pacific railroad, the said St. Vincent Extension, so called, is entirely unconstructed, except that a part of that distance, viz., from Melrose to Alexandria, about thirty-five miles, was graded in the year 1872, leaving two hundred and thirty miles or thereabouts unconstructed and uncompleted.

XXXVIII. That on the fixing of the general route of the Northern Pacific railroad August 13, 1870, as hereinbefore stated, under the provisions of the sixth section of the plaintiff's charter, all the odd-numbered sections of land for forty miles (fol. 92) in width on both sides of said line of general route were by operation of law absolutely withdrawn and reserved until the full amount or quantity of lands granted by Congress to the plaintiff in the State of Minnesota should be secured to and obtained by the plaintiff for the purposes specified in said act of July 2, 1864, notwithstanding which, in the early part of the year 1872, the said St. Paul
62 and Pacific Railroad Company, after its entire abandonment of the work of construction of its road, began to assert a prior

claim to a portion of said (fol. 93) lands withdrawn and reserved for and granted to the plaintiff, said claim of priority being asserted on a pretence of said St. Paul and Pacific Railroad Company that its right thereto took effect from and under and related back to the said act of Congress approved March 3rd, 1857. The said question as to which of said corporations, the plaintiff or the said St. Paul and Pacific Railroad Company, was entitled to the lands within the conflicting limits of their respective alleged grants was by the said St. Paul and Pacific Railroad Company (fol. 94) brought before the Commissioner of the General Land Office in or about the month of March, 1873, when that office decided said question in favor of the plaintiff and against the said St. Paul and Pacific Railroad Company. A selection was made for the purpose of initiating said contest by the last-named company of certain lands within the
63 ten-mile limits of the alleged grant of that company and between the twenty and thirty mile limits of the lands granted to the plaintiff, embracing about nineteen hundred and twenty acres.

An appeal was taken by said St. Paul and Pacific Company (fol. 95) from the said decision of the Commissioner to the Secretary of the Interior, who on the 13th day of May, 1873, decided that the lands then in controversy should be "awarded to the Saint Paul and Pacific Railway Company upon her showing that she has fully complied with the law in the construction of the road." The Secretary in his decision held that the fixing of the general route of the Northern Pacific railroad did, under the sixth section of the plaintiff's charter, exempt the odd section for forty miles (fol. 96) in width on both sides of the road from sale, entry, or pre-emption, but that the said sixth section did not prohibit an appro-
64 priation of the lands for the satisfaction of a prior railroad grant, and that the said act of Congress approved March 3, 1871, is an amendment of the act of March 3, 1857, and should be construed as though it were inserted in that act; and when then read the lands then in controversy were not reserved to the plaintiff by the act of July 2nd, 1864, before the passage (fol. 97) of the act of March 3, 1871, and are not within its terms. The Secretary says: "Under these circumstances I must override the objection and leave the parties their remedy in the courts if they desire to pursue the subject further." The said decision of the Secretary of the Interior was arrived at and made through mistakes in the law of the case on every point and through ignorance, mistakes, and misapprehension of the facts, and was not deemed by him or the Department to be final. Within two months after said decision (fol. 98) of the Secretary the Commissioner of the General Land
64½ Office, under date of July 9, 1873, in an official communication to the register and receiver of the United States land office at Oak Lake, Minnesota, a new district formed out of the Alexandria district and embracing some of the lands hereinafter mentioned, referring to the decision of the Secretary, says: " * * * I have to state that these lands were withdrawn by act of July 2, 1864, along the entire line of Minnesota from August 13th, 1870,

without requiring (fol. 99) any notice on the part of this office. * * *;" and the Secretary himself, in answer to an application made to him on the part of the said St. Paul and Pacific Railroad Company long after the rendering of his said decision, asking to have proceedings instituted to cancel and set aside certain patents for lands within said conflicting limits, but not included in this action, which had been issued by the United States to the plaintiff,
directed the Commissioner of the General Land Office, under
65 date (fol. 100) of April 3, 1874, to inform the applicant that "the right of the St. Paul and Pacific Railroad Company is not, in my (the Secretary's) opinion, so entirely clear as to ask the institution of such proceedings, and that the parties will accordingly be left to the remedies afforded by the courts."

XXXIX. That pursuant to said decision of the Secretary of the Interior there has been issued to the State of Minnesota a patent of the United States, under the seal of the General Land Office and bearing date the 14th day of January, 1875, purporting to convey to the said State, for the use and benefit of the (fol. 101) said St. Paul and Pacific Railroad Company, its successors and assigns, in fee simple, a large amount and quantity of lands, being, with divers other, such portions of the public lands of the United States in odd-numbered sections granted to and inuring to the benefit of the plaintiff under the aforesaid act of Congress approved July 2, 1864,
and said joint resolution of Congress approved May 31, 1870,
66 as is contained within the forty-mile limits of lands granted to the plaintiff as aforesaid, as said limits were made and designated by the Commissioner of the General Land Office, and also within the twenty-mile limits of the alleged and pretended (fol. 102) grant claimed by the said St. Paul and Pacific Railroad Company, as the same are marked and designated on the maps of the General Land Office with respect to the line of the said so-called St. Vincent Extension, as indicated by the map filed on the part of said last-named company by the Governor of said State in the Department of the Interior on the 19th day of December, 1871, as aforesaid, except such parts and parcels thereof as had been previously conveyed to the plaintiff by patent, and the lands within the ten-miles limit of the said St. Paul and Pacific (fol. 103) Railroad Company, according to said maps of the General Land Office, opposite to and coterminous with the uncompleted portions of its
67 road from Melrose to a point about twelve miles south of Glyndon, on the Northern Pacific railroad, the said lands being particularly mentioned and described in the schedule of lands, hereunto annexed, marked "Schedule of lands, Exhibit A," and made part of this complaint. All of said lands are and for a long time past have been in the possession and under the control of the plaintiff (fol. 104), and the same are of the value and are worth over one million dollars. The only claim which the said St. Paul and Pacific Railroad Company or the State of Minnesota has or can have to the said lands or any of them is by, through, or under the said act of Congress approved July 3, 1871, which act does not apply to the line of railroad actually located and partly

constructed as aforesaid or to any line ever adopted or fixed by the said St. Paul and Pacific Railroad Company, and was enacted long after the grant of said lands (fol. 105) to the plaintiff and after the fixing of the general route of the Northern Pacific railroad
68 and the withdrawal of said land for the last-mentioned railroad, as hereinbefore set forth.

XL. That the State of Minnesota has the naked, legal title to said lands, with the exception of two or three small parcels thereof, for which the plaintiff has a patent from the United States, evidently named in said patent to the State through a clerical error, and the said Hon. George P. Wilson, attorney general, is made a party defendant (fol. 106) to the complaint, as the legal representative of said State, that thereby the State of Minnesota and the Governor thereof may have notice of the pendency of this action.

XLI. And the plaintiff alleges that the said St. Paul and Pacific Railroad Company, through certain of its agents and representatives, wrongfully, unlawfully, and fraudulently procured, obtained, and caused the issuing of said patent to the State of Minnesota, having full knowledge and actual notice of all the facts hereinbefore set forth, with the intent to defraud the plaintiff and (fol. 107)
69 obtain said lands for its own use and benefit and for the use and benefit of others, combining and confederating to that end and for that purpose with the said agents and representatives of said last-named company, and the plaintiff has not done, caused, or permitted any act or thing whatsoever by which its claim, right, title, or interest in and to said described lands have been in any manner impaired or defeated, but the said lands and every part thereof in equity and of right belong to the plaintiff, and the plaintiff ought to have the legal title thereto (fol. 108), and the said St. Paul and Pacific Railroad Company has been frequently applied to on the part of the plaintiff and requested to execute the necessary instruments to convey, assure, and affirm to the plaintiff, its successors and assigns, the full and perfect legal title to the hereinbeforementioned lands, but the said St. Paul and Pacific Railroad Company refuses so to do and persists in asserting its
70 said pretended claim to said lands adversely to the plaintiff.

XLII. And the plaintiff alleges that the said St. Paul and Pacific Railroad Company is endeavoring to obtain and procure from the Governor (fol. 109) of said State a conveyance of the said lands patented to the State as aforesaid and of the whole thereof, and by its said agents and representatives is threatening and giving out that it will speedily obtain and procure such conveyance; and it is also in like manner threatening, proposing, and endeavoring to sell, assign, and dispose of large portions of said lands or of some alleged interest therein and to encumber other large portions thereof, and the plaintiff believes it will do so unless enjoined and restrained by this honorable (fol. 110) court; and if the said St. Paul and Pacific Railroad Company be permitted or suffered to obtain such conveyance or to sell, assign, or dispose of the lands hereinbefore de-

scribed or any part thereof or any alleged interest therein
71 or to encumber the same or any part thereof, the said right, title, and interest of the plaintiff therein and thereto will be further clouded and will be complicated, embarrassed, and defeated and the plaintiff thereby irreparably injured; and the plaintiff is wholly without remedy at law.

Wherefore the plaintiff (fol. 111) prays judgment—

I. That the said lands described in said schedule of lands hereto annexed and each and all of them and every part thereof be adjudged, decreed, and determined to be the lands of and belonging to the plaintiff, and that the plaintiff is equitably and legally entitled to have and receive the absolute legal title thereto in fee simple, and that the said St. Paul and Pacific Railroad Company is not equitably or legally entitled to said lands or any part thereof or any interest therein.

II. That the defendants and each and every of them be
72 ordered, adjudged, and decreed to make, execute, and deliver or cause to be made, executed, and delivered to the plaintiff such good and sufficient, necessary and proper, instrument and instruments as shall be ordered and directed by the court, conveying, releasing, assuring, and confirming to the plaintiff the full and perfect legal title to the said lands in fee simple absolute, free of and clear from all and every lien, encumbrance, charge, act, or thing made, done, caused, suffered, or permitted by the said defendants or any of them or by any person or persons, body or bodies politic and corporate or otherwise, claiming under, through, or by the said defendants or any of them, whereby the said claim, right, title, or interest of the plaintiff could be impaired.

73 III. That until the execution and delivery of such instrument and instruments the judgment of the court in this action stand and operate as such conveyance, release, assurance, and confirmation.

IV. That the defendants and each of them and their and each of their agents, officers, attorneys, counselors, and representatives be perpetually (fol. 114) as well as temporarily, and until final judgment in this action, enjoined and restrained from obtaining or procuring, accepting or receiving, and from endeavoring to obtain or procure any patent, grant, deed, or other conveyance of said lands or any part thereof adversely to the plaintiff or otherwise than to and for the plaintiff, and from causing, procuring, permitting, counseling, or aiding any other person or persons, corporate or otherwise, to procure or obtain such conveyance, and from conveying, selling,
74 assigning, or in — manner disposing of said (fol. 115) lands or any part thereof or any alleged interest therein, and from attempting or endeavoring so to do and from in any manner charging or encumbering said lands or any part thereof and from attempting or endeavoring so to do.

V. That the plaintiff have such other and further relief in the premises as shall be just and equitable and judgment therefor and for the costs of this action.

(Signed) GEO. GRAY,
Attorney for Plaintiffs.

STATE OF MINNESOTA, } ss:
Ramsey County, }

Geo. Gray, being duly sworn, says that he is the plaintiffs' attorney in the above-entitled action; that (fol. 116) the foregoing complaint is true to the best of his knowledge, information, and
75 belief, and that the reason why the verification thereof is not made by the said plaintiff is that it is a corporation having its principal office and officers in the city and State of New York, and is and all its officers are absent from the county of Ramsey, Minnesota, where this affiant resides.

(Signed) GEO. GRAY.

Subscribed and sworn to before me this 13th day of March, A. D. 1875.

(Signed) E. T. WILLIAMS,
Notary Public, Ramsey Co., Minn. (N. P. Seal.)

76 EXHIBIT A.

Schedule of Lands.

Township 128, range 32:
W ½ n w ¼ & w ½ s w ¼ of sec 19.

Tp 127, R 33:
North half of sec 1.

Tp 128, R 33:
N w ¼ of sec 1.
S w ¼ s e ¼, sec 3.
W ½ n w ¼, " 7.
S w ¼ s w ¼, s w ¼ s e ¼, sec 9.
S w ¼ n e ¼, sec 17.
E ½ n w ¼, n w ¼ s ½, s w ¼, sec 25.
Lot 2 & e ½ s w ¼, sec 27.
S e ¼ n e ¼, " 33.
E ½ n e ¼, n w ¼ n e ¼, s ½ s w ¼, s w ¼ s e ¼, & e ½ s e ¼, sec 35.

Tp 129, R 33:
N e ¼ n w ¼ of sec 3.
Lot 5, " 29.
W ½ n w ¼ " 31.

Tp 130, R 33:
N e ¼ n e ¼, s w ¼ n e ¼, s ½, n w ¼ s w ¼, n w ¼ s e ¼, S. 31.

Tp 128, R 34:
N e ¼ n w ¼ of sec 7.
Lots 1, 2, & 3, " 9.

Tp 129, R 34:
S ½ n e ¼, s e ¼ n w ¼, n e ¼ s w ¼, and n w ¼ s e ¼, sec 3.
S w ¼ s w ¼, sec 5.
S w ¼ n w ¼, " 13.
W ½ s w ¼ & n ½ s e ¼, sec 17.
S w ¼ n w ¼, sec 21.
Lots 3, 4, & 5, " 25.
S e ¼ n e ¼, n w ¼ n e ¼, lots 1 & 2, sec 27.
S e ¼ n w ¼, sec 31.
N ½ n w ¼ " 33.
S e ¼ se ¼, sec 35.

77 Tp 130, R 34:
N w ¼ n e ¼, sec 19.
S w ¼ n e ¼, n w — s e ¼, sec 21.
W ½ n e ¼, s e ¼ n w ¼, n w ¼ n w ¼, n w ¼ s w ¼, sec 27.
N w ¼ n e ¼, n w ¼ n w ¼, and n w ¼ s w ¼, sec 29.
N e ¼ n e ¼ and n e ¼ s e ¼, sec 33.
E ½ n w ¼ & w ½ s e ¼, sec 35.

Tp 129, R 35:
E ½ n e ¼, n w ¼ n e ¼, n e ¼ n w ¼, w ½ n w ¼, n w ¼ s w ¼, n e ¼ s e ¼, sec. 3.
N w ¼ n e ¼, n e ¼ n w ¼, w ½ n w ¼, n w ¼ s w ¼, & e ½ s w ¼, sec 5.
E ½ n e ¼, e ½ s e ¼, s w ¼ n w ¼, w ½ s w ¼, sec 7.

S e ¼ n e ¼, s w ¼ n w ¼, w ½ s w ¼, s e ¼ s w ¼, s w ¼ s e ¼, & e ½ s e ¼, sec 9.
S e ¼ & s w ¼ n w ¼, sec 11.
E ½ n e ¼, n w ¼ n e ¼, n e ¼ n w ¼.
S w ¼ n w ¼, n w ¼ s w ¼, s e ¼ s w ¼, s w ¼ s e ¼, e ½ s e ¼, sec 13.
N ½ n w ¼ & s e ¼ s w ¼, sec 15.
W ½ n e ¼, E ½ n w ¼, s w ¼, & w ½ s e ¼, sec 19.
N ½ s e ¼, sec 21.
S e ¼ n e ¼, n w ¼ n e ¼, & w ½ s w ¼, sec 23.
W ½ n w ¼, sec 25.

Tp 130, R 35:

S w ¼ n e ¼, w ½, w ½ s e ¼, s e ¼ s e ¼ of sec 5.
All of sec 7.
N w ¼, s w ¼ s w ¼, w ½ s e ¼, sec 9.
S w ¼ n e ¼, s e ¼ n w ¼, w ½, n w ¼ s w ¼, w ½ s e ¼, sec 13.
S w ¼ & n w ¼ s w ¼, sec 15.
N w ¼ & w ½ s e ¼, sec 17.
S e ¼, sec 19.
S e ¼ s e ¼, sec 21.
78 N w ¼, n e ¼ s w ¼, s w ¼ s w ¼, sec 23.
N e ¼ n e ¼, sec 29.
N e ¼ n e ¼, w ½ n e ¼, w ½, w ½ s e ¼, s e ¼ s e ¼, sec 31.
N ½ n e ¼ & n w ¼, sec 35.

Tp 131, R 35:

E ½ n w ¼, n w ¼ n w ¼, & s ½ of sec 31.

Tp 129, R 36:

E ½ n e ¼, n w ¼ n e ¼, n ½ n w ¼, n e ¼ s e ¼, of sec. 1.
N ½ s w ¼, sec 3.
S w ¼ s e ¼, sec 15.
E ½ n e ¼ & e ½ s e ¼, sec 21.
S w ¼ n w ¼, w ½ s w ¼, s e ¼ s w ¼, s ½ s e ¼, sec 23.
W ½ n w ¼, sec 25.

Tp 130, R 36:

N ½, w ½ s w ¼, n e ¼ s w ¼, n w ¼ s e ¼ & e ½ s e ¼, sec 15.
E ½, e ½ n w ¼ & s ½ s w ¼, sec 17.
All of sec 19.
N e ¼, n ½ n w ¼, s ½ s w ¼, w ½ s e ¼, s e ¼ s e ¼, sec 21.
All of sec 23.
N e ¼, s e ¼ n w ¼, s w ¼ n w ¼, & s ½, sec 25.
E ½ n e ¼, n w ¼ n e ¼, n ½ n w ¼, s ½ s w ¼, & s e ¼, sec 27.
E ½, s ½ n w ¼, n e ¼ s w ¼, sec 29.
N ½ n e ¼, w ½, w ½ s e ¼, sec 33.
E ½ n e ¼, n w ¼ & s ½, sec 35.

Tp 131, R 36:

Lot 14 of sec 7.
S ½ n w ¼ & s w ¼ s e ¼, sec 17.
S e ¼ n e ¼, s w ¼, s w ¼ s e ¼, & e ½ s e ¼, sec 19.
E ½ & n e ¼ n w ¼, sec 21.
N ½ n e ¼, n ½ n w ¼, & s e ¼, sec 27.
All of sec 29.
" " 31.
" " 33.
" " 35.
79 Tp 129, R 37:
N w ¼ n w ¼ of sec 1.

Tp 130, R 37:

All of sec 1.
N e ¼ n e ¼, s w ¼ n e ¼, s w ¼ n w ¼, s w ¼, e ½ s w ¼, w ½ s e ¼, & n e ¼ s e ¼, sec 3.
All of section- 5, 7, & 9.
E ½, s ½ n w ¼, n w ¼ s w ¼, e ½ s w ¼, of sec 11.
N e ¼ n w ¼, e ½ s w ¼, w ½ s e ¼, sec 13.
E ½ n e ¼, n w ¼ n e ¼, w ½, & lot 2, sec 15.
All of sec 17.
N e ¼ n w ¼, sec. 21.
S w ¼ s e ¼, lots 4, 5, & 6, sec 23.
All of sec 25.
Lot 4, sec 27.
S e ¼ n e ¼, w ½ n e ¼, e ½ n w ¼, s w ¼ n w ¼, & s e ¼, sec 35.

Tp 131, R 37:

S w ¼ s w ¼ & e ½ s e ¼ of sec 5.
N w ¼, lots 3 & 4, n e ¼ s w ¼, w ½ s e ¼, & s e ¼ s e ¼, sec 7.
N e ¼ n e ¼, s e ¼ n w ¼, sec 9.

N w ¼ n e ¼, n e ¼ n w ¼, lot 2, sec 11.
S w ¼, n w ¼ s e ¼, & lot 4, sec 15.
N e ¼ n e ¼, lots 1, 6, & 7, sec 17.
S ½ s w ¼ & s ½ s e ¼, sec 19.
N e ¼ n e ¼, s w ¼ n e ¼, s e ¼ n w ¼, n e ¼ s w ¼, w ½ s w ¼, sec 25.
E ½ s e ¼, s w ¼ s e ¼, sec 27.
W ½ & s w ¼ n e ¼, sec 29.
All of sec 31.
S ½ n w ¼, s w ¼, & s ½ s e ¼, sec 33.
N e ¼ n e ¼, w ½ s w ¼, s e ¼ s w ¼, s e ¼ s e ¼, sec 35.

Tp 130, R 38:

N e ¼, e ½ n w ¼, n w ¼ s w ¼, e ½ s w ¼, n w ¼ s e ¼, sec 1.
S w ¼ s e ¼, s ½ s w ¼, sec 3.
S w ¼ n w ¼, sec 11.
N ½ n e ¼, sec 15.

Tp 131, R 38:

N e ¼ & w ½ of sec. 1.
N e ¼ n e ¼, w ½ n e ¼, n w ¼, w ½ s w ¼, n e ¼ s w ¼, w ½ s e ¼ s e ¼ s e ¼, sec 3.
80 N ½, w ½ s w ¼, n e ¼ s w ¼, & s e ¼, sec 5.
All of section 7 & 9.
N e ¼, e ½ n w ¼, n w ¼ n w ¼, & s ½ of sec 11.
All of sec 13.
N e ¼, w ½, w ½ s e ¼, s e ¼ s e ¼, sec. 15.
All of sec 17.
N e ¼, e ½ n w ¼, s w ¼ n w ¼, & s ½, sec 19.
All of sec 21.
E ½ n e ¼, n w ¼ n e ¼, n ½ n w ¼, n ½ s w ¼, & s e ¼, sec 23.
All of sec 25.
S w ¼, w ½ s e ¼, & s e ¼ s e ¼, sec 27.
E ½ n e ¼, n w ¼ n e ¼, n e ¼ n w ¼, w ½ n w ¼, w ½ s w ¼, & lot 2, sec 29.
E ½, e ½ n w ¼, n w ¼ n w ¼, n e ¼ s w ¼, sec 31.
Lots 1, 2, 3, 4, 5, & 6, s ½ n w ¼, e ½ s w ¼, s ½ s e ¼, sec 33.
N w ¼ & e ½, sec 35.

Tp 132, R 38:

S ½ n e ¼, n w ¼, & s ½ of sec 19.
All of sections 29, 31, & 33.
S ½ of sec 35.

Tp 133, R 38:

W ½ n e ¼, e ½ n w ¼, & n w ¼ n w ¼ of sec 33.

Tp 131, R 39:

All of sections 1 & 5.
" " " 11 & 13.
N ½, n ½ s w ¼, n ½ s e ¼, & s e ¼ s e ¼ of sec 15.
All of secs 23 & 25.

Tp 132, R 39:

Lot 8 of sec 3.
N ½, n ½ s w ¼, n w ¼ s e ¼, e ½ s e ¼, sec 5.
All of secs 7 & 9.
S w ¼ n e ¼, s ½ n w ¼, s w ¼, & w ½ s e ¼, sec 11.
W ½ n e ¼, w ½, n w ¼ s e ¼, s e ¼ s e, sec. 13.
81 All of secs 15, 17, & 19.
Lot 1, n w ¼, w ½ s w ¼, s e ¼ s w ¼, s w ¼ s e ¼, sec 21.
All of secs 23 & 25.
E ½ n e ¼, s w ¼ n e ¼, n w ¼, & s e ¼ n e ¼, sec 27.
All of sec 29.
Lots 1, 2, 3, 8, 9, & 10, sec 31.
Lots 1, 2, 3, 4, 5, s w ¼ n w ¼, s w ¼, w ½ s e ¼, sec 33.
All of sec. 35.

Tp 132, R 40:

N w ¼, n ½ s w ¼, of sec 5.
N e ¼ n e ¼ " 7.
E ½ n w ¼, n w ¼ s w ¼, & lots 3 & 4 of sec 11.
Lot 3, " 15.
N w ¼ n w ¼ & s w ¼ s w ¼, sec 23.
N w ¼ n e ¼ & lot 1, sec 25.

Tp 133, R 40:

W ½ of sec 19.
Lot 6, 21.
" 3, 29.
" 8, 31.
" 1, 2, & 6, 33.

Tp 133, R 41:

All of secs 1, 3, & 5.
Lots 1, 2, 3, 4, & 5 of sec 9.

All of secs 11 & 13.
N ½ & lots 3, 6, 7, & 8 of sec 15.
N ½, e ½ s w ¼, lots 1 & 2, " 23.
Lots 1, 2, 3, 4, 5, 6, 7, & 8, sec 25.

Tp 134, R 41:

All of sec 1.
N e ¼, n w ¼ s e ¼, s e ¼ s e ¼, lots 3, 4, 5, 6, 7, 8, 9, & 10, sec 3.
E ½ s e ¼ & lots 1, 2, 3, 4, & 5, sec 5.
All of sec 7.
N w ¼, n w ¼ s w ¼, s e ¼ s w ¼, s e ¼, & lots 2 & 3, sec 9.
N ½, n w ¼ s w ¼, lots 2, 3, 4, & 5, sec 11.
E ½ n e ¼, s w ¼, n ½ s e ¼, lots 1, 2, & 3, sec 13.
N ½ n w ¼, s ½ s w ¼, s w ¼ s e ¼, lots 1, 2, 3, 4, 5, 6, 7, & 8, sec 15.
All of secs 17, 19, & 21.
N ½ n e ¼, s ½ n w ¼, s w ¼ s w ¼, s e ¼, lot 1, sec 23.
W ½ n w ¼, s ½, & lots 1 & 2, sec 25.
All of sec 27.
N e ¼ & lots 1, 2, 3, 4, 5, 6, & 9, sec 29.
82 All of secs. 31, 33, & 35.

Tp 135, R 41:

All of secs 5, 7, & 9.
Lot 1, sec 11.
S w ¼, sec 13.
All of secs 15, 17, 19, & 21.
N ½, w ½ s w ¼, n e ¼ s w ¼, n w ¼ s e ¼, e ½ s e ¼, sec 23.
All of sec 25.
E ½, e ½ n w ¼, n w ¼ n w ¼, e ½ s w ¼, sec 27.
All of sec 29.
N ½, e ½ s w ¼, lots 4, 5, 6, 7, 8, sec 31.
All of sec 33.
Lots 3 & 4, sec 35.

Tp 134, R 42:

All of sections 1, 3 & 5.
All of sec 9.
W ½, s ½ s e ¼, & lots 2, 6, 7, 8, sec 11.
All of secs 13, 15, 23, & 25.

Tp 135, R 42:

All of secs 1, 3, 5, & 7.
N e ¼, w ½, & w ½ s e ¼, sec. 9.
All of secs 11, 13, & 15.
E ½, e ½ n w ¼, n w ¼ n w ¼, s w ¼, sec 17.
S e ¼ n e ¼, w ½, n e ¼ n w ¼, s w ¼ s w ¼, e ½ s w ¼, & s e ¼, sec 19.
All of secs 21, 23, 25, 27, & 29.
N ½, e ½ s w ¼, & s e ¼, sec 31.
All of sections 33 & 35.

Tp 136, R 42:

All of sec 3.
Lots 1, 3, 4, 5, & 6, sec 5.
All of secs 7, 9, 11, 13, & 15.
W ½ n e ¼, n w ¼, & s ½ of sec 17.
All of sec 19.
All of secs 23 & 25.
S ½ s w ¼, s ½ s e ¼, lots 1, 2, 3, 4, & 5, sec 27.
All of secs 29, 31, 33, & 35.

Tp 137, R 42:

S e ¼ n e ¼, w ½ n e ¼, e ½ n w ¼, lots 7 & 8, sec 5.
All of sec 7.
S ½ s e ¼ & lots 3, 4, & 5, sec 9.
W ½ n w ¼ & w ½ s w ¼, sec 15.
All of sec 17.
N e ¼, w ¼, & n ½ s e ¼, sec 19.
83 All of sec 21 & 27.
Lots 1, 2, & 4, sec 29.
N ½ & s e ¼, sec 21.
All of sec 33.
S e ¼ n e ¼, w ½ n e ¼, n w ¼, & s ½, sec 35.

Tp 138, R 42:

S ½ n e ¼, s e ¼, & w ½ of sec 19.
S ½ s w ¼ & s w ¼ s e ¼, sec 29.
N ½, n w ¼ s w ¼, & s e ¼, sec. 31.

Tp 135, R 43:

All of sec 1.
N e ¼, n w ¼ n w ¼, w ½ s e ¼, n e ¼ s e ¼, sec 3.
All of sec 11.

N e ¼, w ½, w ½ s e ¼, n e ¼ s e ¼, sec 13.
Lots 1 & 2, sec 23.
N ½ & e ½ s e ¼, sec 25.

Tp 136, R 43:

N ½, n ½ s w ¼, n ½ s e ¼, of sec 1.
All sec 3.
S w ¼ n e ¼, s w ¼ s w ¼, s e ¼ s e ¼, lots 1, 2, & 3, sec 5.
S e ¼ n w ¼, s w ¼ n w ¼, & s w ¼, sec 7.
S ½, sec 9.
Lots 1, 2, 3, 4, & 5, sec 11.
All of secs 13 & 15.
N w ¼ & n ½ s w ¼, sec 17.
N e ¼ n e ¼, lots 4, 5, 7, & 8, sec 19.
S e ¼ n e ¼, s e ¼ n w ¼, w ½ n w ¼, w ½ s e ¼, n e ¼ s e ¼, sec 21.
E ½, e ½ n w ¼, & e ½ s w ¼, sec 23.
N e ¼, e ½ n w ¼, s w ¼ n w ¼, & s ½, sec 25.
All of sec 27.
N e ¼ n w ¼ & n w ¼ n e ¼, sec 29.
E ½ n e ¼, n w ¼ n e ¼, n ½ n w ¼, e ½ s e ¼, sec 33.
N e ¼ w ½, w ½ s e ¼, s e ¼ s e ¼, sec 35.

Tp 137, R 43:

N e ¼, e ½ n w ¼, lots 6 & 7, sec 1.
N ½, n w ¼ s w ¼, e ½ s w ¼, & s e ¼, sec 3.
S e ¼ n e ¼, w ½ n e ¼, n w ¼ n w ¼, s w ¼ n e ¼, s e ¼, sec 5.
All of sec 7.
84 S e ¼ n e ¼, w ½ n e ¼, e ½ n w ¼, n w ¼ s w ¼, & s ½, sec 9.
Lots 1, 3, & 4, S ½ s w ¼, & s w ¼ s e ¼, sec 11.
All of secs 13, 15, 17, & 19.
N ½, n w ¼ s w ¼, e ½ s w ¼, & s e ¼, sec 21.
All of secs 23 & 25.
S ½ n e ¼, n w ¼, & s ½, sec 27.
S e ¼ n e ¼, n w ¼ n e ¼, n w ¼ n w ¼, lots 1, 2, 3, 4, 5, & 6, sec 29.
N e ¼, sec 31.
E ½ n w ¼, n w ¼ n w ¼, s w ¼ s w ¼, e ½ s w ¼, & s e ¼, sec 33.
All of sec 35.

Tp 138, R 43:

W ½ of sec 1.
All of secs 3, 5, 7, 9, 11, 15, & 17.
N ½ n e ¼ & s ½, sec 19.
All of 21 & 23.
S w ¼ & s e ¼ s e ¼, sec 25.
S w ¼ n w ¼ & lot 4, sec 27.
All of 29 & 31.
" " 33 & 35.

Tp 139, R 43:

All of sec 5.
E ½ of " 7.
W ½ n e ¼, w ½ n e ¼, & w ½, sec 9.
W ½ sec 15.
Lots 1, 4, 5, 6, 7, 8, 9, & s ½ of sec 17.
All of sec 19.
W ½ n e ¼, w ½, lots 3, 5, & 6, sec 21.
Lots 3, 4, 5, 6, 7, 8, 9, & 10, sec 27.
N e ¼ n e ¼, n w ¼ n w ¼, s e ¼ s e ¼, lots 1, 2, 3, 5, 6, 7, & 8, sec 29.
All of secs 31 & 33.
N w ¼ & s ½ of sec 35.

Tp 140, R 43:

W ½ of sec 7.
S ½ n e ¼, n w ¼, & s ½, sec 19.
Lots 4, 5, & 7, w ½ s w ¼, & s e ¼ s e ¼, sec 29.
S ½ n e ¼, s ½ s w ¼, & s ½, sec 31.

Tp 136, R 44:

Lots 5, 6, 7, & s ½ s e ¼ of sec 1.

85 Tp 137, R 44:

All of sections 1, 3, 11, & 13.
E ½ of sec 23.
E ½, e ½ n w ¼, & e ½ s w ¼, sec 25.

Tp 138, R 44:

All of section 1.
N e ¼, lots 3 & 10, & s ½ sec 3.

All of sec 5, 7, 9, 11, 13, & 15.
N ½, n ½ s w ¼, & s e ¼ of sec 17.
All of sections 21, 23, 25, & 27.
E ½ of sec 33.
All of " 35.

Tp 139, R 44:

W ½ n e ¼, w ½ lots 1, 5 & 7, sec 1.
All of sections 3, 5, 7, & 9.
S w ¼ n e ¼, n w ¼ s e ¼, w ½, lots 1, 2, 5, 6, 7, 8, & 9, sec 11.
All of sections 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35.

Tp 140, R 44:

Lots 2 & 3 & s ½ of sec 1.
All of sections 5, 7, & 9.
E ½ of sec 11.
All of sections 13, 15, & 17.
N e ¼, e ½ n w ¼, n w ¼ n w ¼, & s ½ sec 19.
All of secs 21, 23, 25, 27, & 29.

Tp 141, R 44:

N ½ s w ¼, s e ¼ s w ¼, sec 23.

Tp 143, R 44:

All of secs 3, 5, 7, 9, 11, 15, 17.
N ½, n ½ s w ¼, & s e ¼, sec 19.
N ½, n ½ s w ¼, n ½ s e ¼, " 21.
N e ¼, e ½ n w ¼, s w ¼ n w ¼, n ½ s w ¼, & n — s e ¼, sec 23.

Tp 145, R 44:

All of secs 5, 7, & 9.
W ½ n w ¼, w ½ s w ¼, sec 15.
All of 17, 19, & 21.
W ½, w ½ n e ¼, & w ½ s e ¼, sec 27.
All of secs 29, 31, & 33.

Tp 146, R 44:

W ½ n e ¼, w ½ s w ¼, & w ½, sec 17.
All of sec 19.
W ½ n w ¼, w ½ s w ¼, sec 21.
All of 29 & 31.
W ½ n e ¼, w ½ s e ¼, & w ½ sec 33.

86 Tp 138, R 45:

All of sec 1 & 3.
S w ¼ n e ¼, n w ¼, & s ½, sec 5.
All of 7.
N e ¼, w ½, w ½ s e ¼, s e ¼ n e ¼, sec 9.
All of 11 & 13.
N e ¼ n e ¼, w ½ n e ¼, n w ¼, & s ½, sec 15.
All of 17, 19, 21.
W ½ n e ¼ & n w ¼ of sec 23.
N ½ of sec. 29.

Tp 139, R 45:

All of sections 1 & 3.
N e ¼, e ½ n w ¼, & s ½ of sec 5.
All of sections 7, 9, 11, 13, & 15.
N e ¼, e ½ n w ¼, s w ¼ n w ¼, & s ½, sec 17.
All of secs 19 & 21.
N ½ n e ¼, s w ¼ n e ¼, n ½ s e ¼, w ½, & lots 1 & 2, sec 23.
All of sections 25, 27, 29, 31, 33, & 35.

Tp 140, R 45:

All of secs 5 & 7.
W ½ n w ¼ & w ½ s w ¼, sec 19.
All of secs 17 & 19.
W ½ n e ¼, w ½ s e ¼, & w ½, sec 21.
All of sections 29 & 31.
W ½ n e ¼, w ½ s e ¼, & w ½, sec 33.

Tp 141, R 45:

W ½ n e ¼, w ½ s e —, & w ½, sec 5.
All of sec 7.
N ½ n w ¼ & w ½ s w ¼, sec 9.
All of 17 & 19.
W ½ n w ¼ & w ½ s w ¼, sec 21.
All of 29 & 31.
W ½ n w ¼, w ½ s w ¼, sec 33.

Tp 142, R 45:

W ½ n w ¼ & w ½ s w ¼, sec 5.
All of sec 7.
W ½ n e ¼, w ½ s e ¼, & w ½, sec 17.
All of sec 19.
W ½ n e, w ½ n e, & w ½, sec 29.
All of sec 31.

Tp 143, R 45:

All of secs 1, 3, 5, 9, 7, & 11, 15, 17, 19, 21, & 23.
N ½, n ½ s w ¼, n ½ s e ¼, sec. 27.
All of sec 29 & 31.

87 Tp 144, R 45:

All the odd-numbered sections.

Town 145, R 45:
All the odd-numbered secs.

Tp 146, R 45:
All of sec 13.
S ½ of " 15.
S ½ s w ¼ & s ½ s e ¼ sec 17.
All of sections 19, 21, 23, 25, 27, 29, 31, 33, 35.

Tp 133, R 45:
W ½ n w ¼ sec 19.
S ½ s w ¼ & s w ¼ s e ¼ sec 29.
N ½ n w ¼ sec 31.

Tp 133, R 46:
All of section- 3, 5, 7, & 9.
W ½ of sec 11.
S e ¼, w ½, sec 13.
W ½ sec 15.
All of sec 17, 19, 21, & 23.
E ½ of section 25.
All of " 27.
W ½ " 29.
N ½ n e ¼ & n ½ n w ¼ 33.
N ½ n e ¼ 35.

Tp 134, R 46:
W ½ sec 17.
All of 19.
W ½ 21.
S w ¼, w ½ n w ¼, 27.
E ½ n w ¼ 29.
S w ¼ 31.
E ½ 33.
S w ¼ 35.

Tp 135, R 46:
S w ¼ & w ½ n w ¼ sec 31.

Tp 138, R 46:
All of secs 1, 3, & 5.
E ½, n e ¼ n w ¼, s w ¼ s w ¼, e ½ s w ¼, sec 7.
All of sections 9, 11, & 13.
N ½, w ½ s w ¼, n e ¼ s w ¼, e ½ s e ¼, sec 15.
All of secs 17, 19, 21, 23, 25, 27, 29, 31, & 33.
N ½ of sec 35.

Tp 139, R 46:
All the odd-numbered sections.

88 Tp 140, R 46:
All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, & 33.
N ½ n e ¼, n e ¼ n w ¼, s w ¼ n w ¼, s w ¼ s w ¼, s e ¼, sec 35.

Tp 141, R 46:
All of secs 1, 3, 5, 7, 9, 11, & 13.
S e ¼ n e ¼, w ½ n e ¼, n w ¼, & s ½, sec 15.
All of secs 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35.

Tp 142, R 46:
S e ¼ s e ¼, w ½ s e ¼, s w ¼, sec 1.
All of secs 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, & 23.
E ½ n e ¼, n w ¼ n e ¼, n e ¼ n w ¼, w ½ n w ¼, w ½ s w ¼, s w ¼ s e ¼, & e ½ s e ¼, sec 25.
All of secs 27, 29, 31, 33, & 35.

Tp 143, R 46:
All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, & 33.
N e ¼, n e ¼, w ½ n e ¼, n w ¼, n w ¼ s w ¼, sec 35.

Tp 144, R 46:
All of sections 1, 3, 5, 7, 9, 11, 13, 17, 19, 21, 23, & 25.
W ½ s w ¼, s e ¼ s w ¼, s w ¼ s e ¼, e ½ s e ¼, & n ½, sec 27.
All of secs 29, 31, 33, & 35.

Tp 145, R 46:
All the odd-numbered sections.

Tp 146, R 46:
S ½ n e ¼ s ½, n w ¼, & s ½ of sec 19.
S ½ n e ¼, s ½ n w ¼, & s ½, sec 21.
S ½ n e ¼, s ½ n w ¼, & s ½, sec 23.
N ½ n w ¼, s ½ s w ¼, & n ½, sec 25.
All of secs 27, 29, 31, 33, & 35.

89 Tp 133, R 47:
E ½ of sec 11.
N e ¼ & s ½, " 13.

Tp 135, R 47:
All of secs 1, 3, 5, 7, & 9.

S w ¼, w ½ n w ¼, & w ½ s e ¼, sec 11.
All of secs 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35.

Tp 136, R 47:

All of secs 1, 3, 5, 7, 9, 11, 15, 17, & 19.
W ½, w ½ n e ¼, w ½ s e ¼, sec 21.
All of secs 23 & 25.
W ½ s w ¼, sec 27.
All of secs 29, 31, 33, & 35.

Tp 138, R 47:

All of secs 1, 3, 5, 7, & 9.
S ½ n e ¼, n w ¼, & s ½ of sec 13.
All of secs 15, 17, 19, & 21.
N e ¼, w ½, w ½ s e ¼, & n e ¼ s e ¼, sec 23.
All of secs 25, 27, 29, 31, 33, & 35.

Tp 141, R 47:

All of secs 1, 3, 5, 7, 9, 11, 13, 15, & 17.
N ½ n e ¼ & n ½ n w ¼ of sec 19.
N ½ n e ¼ & n ½ n w ¼, sec 21.
N ½ n e ¼, n ½ n w ¼, sec 23.

Tp 142, R 47:

All the odd-numbered sections.

Tp 143, R 47:

All the odd-numbered sections.

Tp 144, R 47:

All the odd-numbered sections.

Tp 145, R 47:

All of sec 1.
S w ¼ n w ¼, s w ¼ s ½, s e ¼, sec 17.
All of sec 13.
N ½ n e ¼, s w ¼, & s e ¼, sec 19.
All of secs 21, 23, 25, & 27.
E ½ n e ¼, n w ¼ n e ¼, n e ¼ n w ¼, sec 29.
All of secs 33 & 35.

Tp 146, R 47:

S ½ of sec 35.

90 Tp 142, R 48:

N ½ of sec 1.
All of sec 3.
E ½ " 9.
All of " 11.
" " 13.
E ½ of sec 15.
All of " 23.
S ½ n e ¼, s ½ n w ¼, & s ½ sec 35.

Tp 143, R 48:

All of sec 1.
E ½ & n w ¼ sec 3.
All of " 21.
S e ¼ " 23.
All of " 25 & 27.
N e ¼, n e ¼ n w ¼, n w ¼ s e ¼, e ½ s e ¼, sec 29.
All sec 35.

Tp 144, R 48:

All of sections 1, 3, 5, & 7.
E ½, e ½ n w ¼, & s w ¼ of sec 9.
All of secs 11, 13, 15, & 17.
E ½ n e ¼, s w ¼ n e ¼, n w ¼, & s ½, sec 19.
All of sections 21, 23, 25, 27, 29, 31, 33, & 35.

Tp 145, R 48:

All of sec 1.
N ½, n w ¼ s w ¼, e ½ s w ¼, & s e ¼, sec 3.
N ½, e ½ s w ¼, & s e ¼, sec 7.
All of sections 11 & 13.
W ½ n w ¼, s w ¼, & s w ¼ s e ¼, sec 17.
E ½, e ½ n w ¼, e ½ s w ¼, sec 19.
All of sections 29 & 31.

Tp 146, R 48:

S ½ n e ¼, s ½ n w ¼, & s ½ sec 19.
S ½ n e ¼, s ½ n w ¼, & s ½ sec 21.
S ½ n e ¼, s ½ n w ¼, & s ½ sec 23.
All of sections 25, 27, 29, 31, & 35.
S w ¼ & n ½ of sec 33.

Tp 145, R 19:

S w ¼ n e ¼ & lots 4 & 5, sec 1.

91 Lot 4, sec 13.
" 1, " 23.
S e ¼ n e ¼, n e ¼ s e ¼, & lots 2, 3, 4, 5, sec 25.

Tp 146, R 49:
Lots 1 & 2 of sec 23.

E ½ n w ¼, e ½ s w ¼, & e ½ lots 1, 2, 3, & 4, sec 25.
Lots 1, 2, 3, 4 of sec 35.

92 SIR: You will please take notice that on the 16th day of April, 1875, at seven o'clock p. m. of that day, the undersigned will apply to C. P. Stearns, judge of the district court for the 11th judicial district for the county of Clay, in the State of Minnesota, at his chambers, in the city of Duluth, in this State, for an order that he be admitted as a party defendant in that certain action pending in said court wherein The Northern Pacific Railroad Company is plaintiff and The Saint Paul and Pacific Railroad Company and George L. Becker, William G. Moorhead, and Horace Thompson, trustees, and the Hon. Geo. P. Wilson, attorney general of the State of Minnesota, are defendants, with leave to defend the same; and said application will be made upon the petition of the undersigned hereto annexed, a copy whereof is hereby served upon you and upon the complainant in aforesaid action, and for such further order and relief in the premises as to the said court shall seem meet and proper.

93 Yours respectfully, I. V. D. HEARD,
Attorney for said Jesse P. Farley, Receiver.

To Col. Geo. Gray, attorney for the Northern Pacific Railroad Company, plaintiff in said action.

STATE OF MINNESOTA:

District Court for 11th Judicial District, County of Clay, *ss:*

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY, GEO. L. Becker, William G. Morrhead, and Horace Thompson, Trustees, and the Hon. Geo. P. Wilson, Attorney General of the State of Minnesota, Defendants.

It is hereby stipulated and agreed that the application of
94 Jesse P. Farley, receiver, to be admitted a party defendant, with leave to defend the above-entitled action, be granted as prayed in his annexed petition, and that waiving all notice an order to that effect be made and entered accordingly, and that the said receiver have until the 20th day of April instant to demur or answer to the plaintiff's complaint herein.

GEO. GRAY,
Attorney for Plaintiff.
I. V. D. HEARD,
Attorney for Jesse P. Farley, Receiver.

Dated St. Paul, Minn., April 9th, 1875.

To the honorable the district court for the eleventh judicial district for the county of Clay, in the State of Minnesota:

Your petitioner, Jesse P. Farley, respectfully represents that on or about the seventeenth day of March, A. D. 1875, the North-
95 ern Pacific Railroad Company, a corporation under the laws of the United States, commenced an action in this court against the Saint Paul and Pacific Railroad Company, George L. Becker and William G. Moorehead and Horace Thompson, trustees, and the Hon. George P. Wilson, attorney general for the State of Minnesota, defendants, upon a complaint on file in the office of the clerk of this court, and a printed copy whereof is herewith produced and to which your petitioner begs leave to refer.

That the mortgage referred to in the second claim or section of said complaint was given to secure an issue of bonds to the amount of fifteen millions of dollars, whereof over ten million dollars were actually issued and negotiated during the years 1871 and 1872 in Holland, Europe.

That said bonds were made by the First Division of the Saint Paul and Pacific Railroad Company secured under said mortgage
96 under an arrangement between said two companies in substance as follows, viz:

The said First Division Company were to negotiate said bonds and out of the proceeds thereof was to construct and equip ready for operation the said so-called extension lines of railroad, to wit, the line from St. Cloud to St. Vincent, called the "St. Vincent extension," and the line from Brainerd to Watab, called the "Brainerd extension," it being expressly provided both in said bonds and said mortgage that the whole proceeds of said bonds should be applied to such construction and equipment, the said lines to be fully completed within the life of the said grant of lands by the United States to the State of Minnesota to aid in the construction of said lines of road, as in the complaint set forth, and which would lapse on the 3rd day of December, 1873, and on the completion of said lines the same were to be operated for a period of ninety-nine years by the said First Division Company under a lease executed to said
97 company by the said Saint Paul and Pacific Company of the same date as said mortgage, and the same being part and parcel of said arrangement for said construction.

That said mortgage covered not only said lands but both of said extension lines of railroad so to be constructed by said First Division Company, and the said lines of railroad, together with the lands to accrue to said St. Paul and Pacific Company from the construction and equipment thereof constituted, are the security for the said fifteen million dollars of bonds so to be issued and negotiated.

That the proceeds of said bonds so negotiated were not all applied to the construction of said lines of road, but about three millions of dollars of such proceeds were diverted from such construction and wrongfully applied toward the construction of the lines of road belonging to said First Division Company and the payment of interest

upon its own mortgage upon its said lines; that by reason of
97½ such diversion and for other reasons not here enumerated the said First Division Company failed and neglected to construct and equip the said extension lines of road, and on about the 29th day of July, 1873, there being no portion of said road completed or equipped so as to secure any of the lands so granted in aid of said lines, only 139 miles of said road being ironed and over 230 miles thereof being uncompleted, and the said First Division Company having abandoned said work, and the said land grant being about to expire as aforesaid, and thereby the said bondholders being in danger of losing all or nearly all of their security under the said mortgage, John S. Kennedy, Henry M. Baker, and John S. Barnes, the holders of certain of said bonds, for themselves and in behalf of all other holders thereof who might choose to come in and seek relief with them duly commenced an action in the circuit court of the United States for the district of Minnesota, in equity,
98 against the said Saint Paul and Pacific Railroad Company.

The said First Division of the Saint Paul and Pacific Railroad Company, the said Northern Pacific Railroad Company, and others, including the said Becker, Moorhead, and Thompson, trustees as aforesaid, defendants, upon a bill of complaint alleging, among other things, the matters hereinbefore set forth, and praying, among other things, that the said Saint Paul and Pacific and First Division Companies and the said Becker might each be required to account in said court of and concerning the said bonds so issued under said extension mortgage, and of and concerning the proceeds of the sales of them, and of and concerning any material purchased with the proceeds of said bonds for the construction of said lines, and that the court, through its receiver or other proper officer by it appointed for that purpose, take charge of all the trust funds and property in said bill of complaint mentioned, and secure and preserve the same for the benefit of the bondholders interested
99 therein, and that the court, by or through such receiver, do or cause to be done all such acts or things as might be necessary to be done to secure the title in the said St. Paul and Pacific Company, so that the same might enure to the security and benefit of the bondholders under said extension mortgage to the lands so granted to said company by said acts of Congress, and that all of said trust funds and property be sold and disposed of to pay the cost of completion of said extension lines, and that said mortgage be foreclosed and all the mortgage property sold to satisfy said outstanding bonds, and that pending said suit the court forthwith appoint a receiver of all the property, real and personal, lands, judgments, and franchises of the said St. Paul and Pacific Company, and that said receiver be forthwith let into the possession thereof to hold, use, and manage the same, with power to borrow money for the speedy and seasonable construction of said lines of road, and
100 with all the usual powers of receivers in such cases.

That such proceedings were had in the said action that on the 1st day of August, 1873, by an order of the said court duly made and entered therein, your petitioner was duly appointed receiver of

all and singular the aforesaid Saint Vincent and Brainerd extension lines of railroad, and also of all and singular the right, title, and interest which the said St. Paul and Pacific Company then had or might thereafter acquire by reason of the construction of said lines of railroad or either of them, or of any part of either thereof, in and to and concerning all the lands situate in said State of Minnesota and granted or intended to be granted by various acts of the Congress of the United States for the purpose of aiding in the construction of said lines of road or which the said St. Paul and Pacific Company had then acquired or might thereafter acquire pertaining to said railroads by grants from said State of Minne-
101 sota and of all and singular the road-beds, tracks, bridges, buildings, etc., locomotives, cars, and rolling stock then owned or thereafter to be acquired by said St. Paul and Pacific Company, and all equipments and appurtenances of the said railroads or either of them, and all property, rights, franchises, privileges whatsoever appertaining to the said roads or to either of them or to any part of them then held or thereafter to be acquired by said St. Paul and Pacific Railroad Company, together with all and singular the tenements, hereditaments, and appurtenances to the said railroad, lands, and premises or any part thereof belonging or in anywise appertaining, and also of all the estate, right, title, interest, property, claims, and demands whatsoever, as well in law as in equity, of the said defendant, The Saint Paul and Pacific Railroad Company, in and to and concerning the said railroads and every part and parcel thereof, with the powers and duties thereinafter expressed.

102 The said order then authorized and required said receiver to take possession forthwith of all and singular the aforesaid property and to proceed to construct the unconstructed portion of said railroads, and to put such portions thereof already constructed or partly constructed in good order, to be operated as railroads; and he was further authorized and directed to do and perform all acts and things necessary to be done and performed to vest and secure in said railroad company the title to all lands granted or intended to be granted by any acts of Congress or of the Legislature of the State of Minnesota to the said railroad company; and for such purposes the said receiver was authorized to borrow money and issue his debentures therefor to an amount not to exceed five millions of dollars, the said loan to be a first lien upon one of said roads, lands, and property whatever of said company, with power in said
103 receiver to enforce payment of said debentures by sale of said roads, lands, and property, and in and by said order the defendants in said action and each of them was duly enjoined from interfering with the said lands, premises, and property or any part thereof, and from interfering with the said receiver in the performance by him of his duties as such receiver, the said injunction, however, expressly reserving to the said Northern Pacific Railroad Company the right to assert before the Department in Washington or in any court its rights to any lands granted to it.

Your petitioner further alleges that he duly qualified and entered upon his duties as such receiver under the aforesaid order and still is such receiver, and that the order has never been vacated or discharged; that under and pursuant to said order he duly took possession of said line of road and of said lands and property
104 and still is in possession thereof thereunder; that the said Northern Pacific Company has acquired and now holds and owns all the capital stock of said St. Paul and Pacific Company, and said last-named company has no interest to defend and is not defending the aforesaid action so brought and pending in this court; that the trustees under said mortgage represent that they cannot defend said action without funds, and allege that they have no funds in their hands for that purpose, and your petitioner is the only party who can properly defend the same, as he is informed and verily believes.

Wherefore your petitioner prays that he may be admitted as a party defendant to the said action, with leave to defend the same, and that he may have such reasonable time to answer the said complaint or demur thereto or move in regard thereto as to the court may seem just and proper, and that he may have such further
105 or other relief in the premises as to the court may seem just and proper.

JESSE P. FARLEY, *Receiver*,
By I. V. D. HEARD,
His Attorney.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Isaac V. D. Heard, of said county, being duly sworn, says that he is the attorney for Jesse P. Farley, receiver as aforesaid, the above-named petitioner, and has full authority from said receiver as such attorney to sign the name of said Farley as such receiver to said petition and to make this verification, and full authority as such attorney to make this application to this court upon said petition; that he has read the foregoing petition and knows the contents thereof, and that the allegations therein contained are true, to the best of his knowledge, information, and belief; that the rea-
106 son why said petition is not signed and verified by said receiver in person is because he is not now within this State. Deponent further says that he is not only the attorney for the receiver in this particular matter, but he is the general attorney of said receiver in all matters appertaining to his office of receiver duly appointed as such general attorney by the said United States circuit court.

I. V. D. HEARD.

Sworn and subscribed to before me this 8th day of April, A. D. 1875.

[SEAL.]

CHAS. E. OTIS,
Notary Public, Minn.

Personal service of the within notice and petition by copy is hereby admitted the 8th day of April, 1875.

GEORGE GRAY,
Attorney for said Plaintiff, N. P. R. R. Co.

107 Filed April 17th, 1875.

G. H. HENDRICKS,
Deputy Clerk, District Court.

STATE OF MINNESOTA:

District Court for Eleventh Judicial District, Clay County.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY, GEORGE L. Becker, William G. Morrehead, and Horace Thomson, Trustees, and the Hon. George P. Wilson, Attorney General of the State of Minnesota.

On reading the petition of Jesse P. Farley, receiver, and the stipulation of counsel thereto annexed, and on motion of I. V. D. Heard, Esq., attorney for said receiver, it is hereby ordered that the said Jesse P. Farley, as such receiver, be, and he hereby is, admitted a party defendant in the above-entitled action, with leave to de-
108 fend the same in all respects the same as though said receiver had been made a party defendant to said action originally, with leave to answer or demur to said complaint at any time until the 20th of April instant, as in said stipulation provided.

By the court.

O. P. STEARNS, *Judge.*

Dated at Duluth, April 10th, 1875.
Filed April 17th, 1875.

G. H. HENDRICKS,
Deputy Clerk, Dist. Court.

STATE OF MINNESOTA:

District Court for 11th Judicial District, Clay County.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD CO., GEO. L. BECKER, Horace Thompson, and William G. Morrehead, Trustees; the Hon. Geo. P. Wilson, Attorney General of the State of
109 Minnesota, and Jesse P. Parley, Receiver.

To Col. Geo. Gray, attorney for plaintiff:

SIR: You will please take notice that on the petition and bond, copies whereof are hereto annexed, and upon the complaint herein and upon the records and files in this action, the defendants, Horace Thompson and William G. Morrhead, trustees, and Jesse P. Farley, receiver, will apply to the Hon. C. P. Stearns, judge of the court, at his chambers, in the city of Duluth, in this State, on Friday, the 16th day of April, at seven o'clock in the afternoon, for an order that said

petition and bond be accepted, and that this action be removed from this court into the circuit court of the United States for the district of Minnesota, and that no further proceedings herein be had
110 in this court, and for such other and further relief as to this court may seem meet and proper.

Yours, etc.,

GEO. L. AND CHAS. E. OTIS AND
GILMAN, CLOUGH AND LANE,
Attorneys for Defendants, Thompson and Moorehead.
I. V. D. HEARD,
Attorney for Jesse P. Farley, Receiver.

STATE OF MINNESOTA:

District Court for 11th Judicial District, Clay County.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, GEORGE L. Becker, William G. Moorehead, and Horace Thompson,
111 Trustees, and the Hon. Geo. P. Wilson, Attorney General for the State of Minnesota, and Jesse P. Farley, Receiver.

To the honorable the district court aforesaid:

Your petitioners, Horace Thompson and William G. Moorehead, trustees, and Jesse P. Farley, receiver, defendants in the above-entitled action, respectfully represent that said action was commenced in this court on or about the 17th day of March, 1875; that the matter in dispute in said action exceeds, exclusive of costs, the sum and value of five hundred dollars; that the subject-matter of said action and the questions involved therein arise under the laws of the United States; that said action is of a civil nature, in equity.

That the said plaintiff, The Northern Pacific Railroad Company, is a corporation under the laws of the United States; that the defendant, The St. Paul and Pacific Railroad Company, is a cor-
112 poration under the law of the State of Minnesota; that the defendant, William G. Moorehead, is and was when said action was commenced a citizen of the State of Pennsylvania, and the defendant, Jesse P. Farley, is and was when said action was commenced a citizen of the State of Iowa, and the defendants, George L. Becker and Horace Thompson, are and were when this action was commenced citizens of the State of Minnesota.

The controversy in said action can be fully determined therein as between all the parties thereto; that since said action was commenced there has been no term of this court at which the same could be tried, and the same has not been tried.

Wherefore and for and on account of the facts apparent upon the records of this action and upon the bond executed in their behalf for the purpose of the removal of this action, to all which papers reference is hereby made, these defendants file this their peti-
113 tion for the removal of said cause from this court into the next circuit court of the United States to be holden in and

for the district of Minnesota, and pray that the court will accept the surety offered and proceed no further in this cause.

GEO. L. AND CHAS. E. OTIS AND
GILMAN, CLOUGH & LANE,
Attorneys for said Defendants, Horace Thompson and William G. Moorehead.

I. V. D. HEARD,
Attorney for said Defendant, Jesse P. Farley.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Horace Thompson, of said county, being duly sworn, says that he is one of the defendants in the above-entitled action and one of the above-named petitioners; that he has read the foregoing petition and knows the contents thereof, and that the same is true, to the best of his knowledge, information, and belief.

114 HORACE THOMPSON.

Sworn and subscribed to before me this 13th day of April, A. D. 1875.

GEO. A. HAMILTON, [SEAL.]
Notary Public.

115 Know all men by these presents that we, Horace Thompson, as principal, and George L. Otis and H. P. Upham, as sureties, all of the city of St. Paul, in the State of Minnesota, are held and firmly bound unto the Northern Pacific Railroad Company, a corporation under the laws of the United States, in the penal sum of one thousand dollars, lawful money of the United States; to the payment of which said sum, well and truly to be made to the said Northern Pacific Railroad Company, its successors or assigns, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of April, A. D. 1875.

The condition of the foregoing obligation is such that whereas there is now pending in the district court for the 11th judi-
116 cial district, county of Clay and State of Minnesota, a certain suit wherein the above-named obligee is plaintiff and the St. Paul and Pacific Railroad Company, George L. Becker, Wm. G. Moorhead, and Horace Thompson, trustees; the Hon. George P. Wilson, attorney general of the State of Minnesota, and Jesse P. Farley, receiver, are defendants, which said trial is of a civil nature and arises under the laws of the United States, and wherein the controversy is wholly between citizens of different States, and which suit can be fully determined as between them; and

Whereas said defendants, Horace Thompson and William G. Moorehead, trustees, and Jesse P. Farley, receiver, are about to apply to said court for the removal of said action therefrom to the circuit court of the United States for the district of Minnesota, conformably to the acts of Congress in such cases made and provided:

Now, therefore, if the said defendant shall enter in said
117 circuit court on the first day of its session next hereafter to ensue a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall do such other appropriate acts as by any act of Congress are required to be done upon the removal of a suit into the United States court, then this obligation shall be void; otherwise of full force and effect.

HORACE THOMPSON. [SEAL.]
GEORGE L. OTIS. [SEAL.]
H. P. UPHAM. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. E. OTIS.

118 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 12th day of April, 1875, before me personally came Horace Thompson, George L. Otis, and H. P. Upham, to me well known to be the same persons who executed the foregoing bond, and duly acknowledged the same to be their own free act and deed.

[SEAL.] GEO. A. HAMILTON,
Notary Public, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Horace Thompson, George L. Otis, and H. P. Upham, of said county, being duly sworn, doth each for himself depose and say that he is a resident and freeholder of the State of Minnesota, and is worth the sum of two thousand dollars over and above all
119 liabilities and debts and exclusive of property exempt by law from execution.

HORACE THOMPSON.
GEORGE L. OTIS.
H. P. UPHAM.

Sworn and subscribed to before me this 12th day of April, A. D. 1875.

[SEAL.] GEORGE A. HAMILTON,
Notary Public, Minn.

Due service of the within notice of motion and motion papers is hereby admitted and consent is hereby given that said motion be made at the time and place specified in the within notice.

GEO. GRAY,
Attorney for Plaintiff, The Northern Pacific Railroad Company.

St. Paul, Minn., April 14th, 1875.

Filed May 23rd, 1875.

G. A. HENDRICKS,
Dep'y Clerk.

120 STATE OF MINNESOTA:

District Court for 11th Judicial District, Clay County.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY, GEO. L. Becker, William G. Moorehead, and Horace Thompson, Trustees; the Hon. Geo. P. Wilson, Attorney General for the State of Minnesota, and Jesse P. Farley, Receiver.

The defendants, Horace Thompson and Wm. G. Moorhead, trustees, and Jesse P. Farley, receiver, having made and filed their petition in the above-entitled action to the effect that the matter in dispute therein exceeds, exclusive of costs, the sum and value of five hundred dollars, and that the subject-matter of said action and the questions involved therein arose under the laws of the United States; that said action is of a civil nature in equity; and it
121 appearing that the controversy in said action arises wholly between citizens of different States, and that the same can be fully determined in said action as between all the parties thereto, and that since said action was commenced there has been no term of this court at which the same could be tried, and the same has not been tried, and praying that said action may be removed into the circuit court of the United States for the district of Minnesota; and it also appearing that said defendants have filed a bond with good and sufficient surety for their entering in said circuit court on the first day of its session next hereafter to ensue a copy of the record in said suit and for paying all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and doing such other appropriate acts as are by law required in such cases, which
122 said petition and bond in all respects conform to the requirements of the acts of Congress in such case made and provided; and upon motion of Geo. L. and Chas. E. Otis and Gilman, Clough & Lane, attorneys for said defendants, Horace Thompson and William G. Moorehead, and I. V. D. Heard, attorney for said receiver, Geo. Gray, Esq., plaintiff's attorney, and George P. Wilson, attorney general, consenting thereto, and due notice of said application having been filed, it is hereby ordered that said petition and bond be, and the same are hereby, accepted, and said action be, and the same is hereby, removed from this court to the circuit court of the United States for the district of Minnesota, and that no further proceedings be had in said action in this court.

At chambers, April 16th, 1875.

By the court:

O. P. STEARNS, *Judge.*

123 Filed April 23rd, 1875.

C. A. HENDRICKS,
Dep'y Clerk.

STATE OF MINNESOTA,
For 11th Judicial District, County of Clay, } ss:

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY, GEORGE L. Becker, Wm. G. Moorehead, and Horace Thompson, Trustees; Hon. George P. Wilson, Attorney General of the State of Minnesota, and Jesse P. Farley, Receiver.

General Term, May 4th, 1875.

The defendants, Horace Thompson and William G. Moorehead, trustees, and Jesse P. Farley, receiver, having made and filed their petition in the above-entitled action to the effect that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars, and that the subject-matter of said action and the questions involved therein arise under the laws of the United
124 States; that said action is of a civil nature in equity; and it appearing that the controversy in said action arises wholly between citizens of different States, and that the same can be fully determined in said action as between all the parties thereto, and that since said action was commenced there has been no term of this court at which the same could be tried, and the same has not been tried, and praying that said action may be removed into the circuit court of the United States for the district of Minnesota; and it also appearing that said defendants have filed a bond with good and sufficient surety for their entering in said circuit court on the first day of its session next thereafter to ensue a copy of the records in said suit and for paying all costs that may be awarded by said circuit court if said court shall hold that said suit was wrong-
125 fully or improperly removed thereto, and doing such other appropriate acts as are by law required in such cases, which said petition and bond in all respects conform to the requirements of the acts of Congress in such cases made and provided;

And upon motion of Geo. L. and Chas. E. Otis and Gilman, Clough and Lane, attorneys for said defendants, Horace Thompson and William G. Moorehead, and I. V. D. Heard, attorney for said receiver, Geo. Gray, Esq., attorney for said plaintiff, and Geo. P. Wilson, attorney general for the State of Minnesota, consenting thereto, and due notice of said application having been filed—

It is hereby ordered that said petition and bond be, and the same are hereby, accepted, and said action be, and the same is hereby, removed from this court to the circuit court of the United States for the district of Minnesota, and that no further proceedings be had in said action in this court.

By the court:

C. P. STEARNS, *Judge.*

May 4th, 1875.

6—344

126 Filed May 4th, 1875.

G. A. HENDRICKS,
Dep'y Clerk, Clay Co.

STATE OF MINNESOTA:

District Court for 11th Judicial District, County of Clay.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY and HORACE Thompson, George L. Beacker, and Wm. G. Moorehead, Trustees, and the Honorable George P. Wilson, Attorney General of the State of Minnesota, and Jesse P. Farley, Receiver.

Clerk's Certificate.

STATE OF MINNESOTA, }
County of Clay. }

I, John Erickson, clerk of the above-named court, do hereby
127 certify that I have compared the papers in writing to which this certificate is attached, the same being a copy of the record in the above-entitled action, and that the same are true and correct copies of the complaint, notice of application of J. P. Farley for leave to come in and defend, and the stipulation and petition therein; order admitting Jesse P. Farley, receiver, as party defendant; notice of motion to remand action into United States circuit court, and petition and bond therein; order removing action into United States circuit court, and duplicate thereof, the same being all the papers filed in this case and constituting the whole of the record in the above-entitled action as the same appears of record and on file in the said clerk's office, at Moorhead, in said county of Clay.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Moorhead aforesaid, this 11th day of May, A. D. 1885.

128 JOHN ERICKSON,
Clerk of Court.

[Seal of Clerk.]

Return endorsed: "Filed June 1, 1875. H. E. Mann, clerk."

129 And afterwards, to wit, on the 21st day of June, 1875, the complainant filed its bill of complaint in this cause, the same being a repleader, in the words and figures following, to wit:

130 Circuit Court of the United States, District of Minnesota.
In Equity.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
ST. PAUL AND PACIFIC RAILROAD COMPANY and Others.

Bill of Complaint.

Geo. Gray, solicitor and of counsel for complainant.

131 In the Circuit Court of the United States for the District of Minnesota. In Equity.

To the judges of the circuit court of the United States for the district of Minnesota:

The "Northern Pacific Railroad Company," a corporation created by and existing under an act of the Congress of the United States entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2, 1864, having its principal office and its place of meeting in the city, county, and State of New York, and a citizen of the State of New York, brings this its bill, according to the rules and practice of this court, against the Saint Paul and Pacific Railroad Company, a corporation created by and existing under the laws of the State of Minnesota, and a citizen of the State of Minnesota, and Horace Thompson and George L. Becker, both of the city of St. Paul, in the State of Minnesota, and citizens of the State of Minnesota, and William G. Moorhead, of the city of Philadelphia, in the State of Pennsylvania, and a citizen of the State of Pennsylvania, trustees, and the Hon-
132 orable George P. Wilson, attorney general of the State of Minnesota, of the city of Winona, in the State of Minnesota, and a citizen of said State, this suit having been commenced in a court of the said State of Minnesota, namely, the district court for the county of Clay, and removed therefrom to this court, on the petition of said defendants or some of them under, and according to the provisions of the act of Congress entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875.

And thereupon your orator complains and says that your orator is a corporation created by and existing under the act of Congress aforesaid, approved July 2, 1864, commonly called "the charter of the Northern Pacific Railroad Company," and is the owner of the Northern Pacific railroad and its appurtenances and of the lands granted by Congress to aid in the construction of said railroad and telegraph line, hereinafter particularly mentioned and described; that about four hundred and fifty miles of said railroad in the State of Minnesota and the Territory of Dakota and about one hundred and five miles of said railroad in the Territory of Washington have

been fully constructed, completed, and equipped by your orator, and are now in operation.

That your orator fixed the general route of its said railroad in the years eighteen hundred and sixty-nine and eighteen hundred and seventy, and afterwards, namely, on the thirteenth day of August, eighteen hundred and seventy, your orator filed a map or plat of said general route, approved by the Secretary of the Interior, in the office of the Commissioner of the General Land Office, at Washington; and thereupon the Secretary of the Interior ordered
133 the withdrawal of all the odd-numbered sections of lands within twenty miles on each side of the line of said general route for the benefit of your orator.

That your orator amended its said line of general route and filed a corrected map thereof, approved by the Secretary of the Interior, in said General Land Office on the eighth day of October, eighteen hundred and seventy, and on the twelfth day of the same month the Secretary of the Interior ordered a withdrawal of lands as aforesaid conformably to said corrected line.

That your orator proceeded with the work of definite location and construction of said railroad and definitely fixed the line thereof, and on the twenty-first day of November, eighteen hundred and seventy-one, filed a map or plat of the line so definitely fixed, also approved by the Secretary of the Interior, in the office of the Commissioner of the General Land Office, and your orator constructed and equipped said railroad and telegraph line from a point about twenty miles west of Duluth, on Lake Superior, through the State of Minnesota to the Red River of the North, in all respects as a first-class railroad, and has ever since operated and maintained the same on said line of definite location as the same is indicated and laid down on said map or plat filed on the 21st day of November, 1871, and said railroad so located and constructed was accepted and approved by the President of the United States in accordance with the provisions of section four of the said act of Congress approved July 2, 1864.

And your orator shows unto the court that by section three of the said act of Congress there was granted to your orator, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast and of secur-
134 ing the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road would be definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office; and in and by said section three of said act it was further provided and enacted that whenever prior to said time any of said sections or parts of sections had been granted, sold, reserved, occupied by homestead set-

tlers, or pre-empted or otherwise disposed of other lands should be selected by your orator in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections. By section six of said act of Congress it was further enacted that the President of the United States should cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route should be fixed and as fast as required by the construction of said railroad, and the odd sections of land by said act granted should not be liable to sale or entry or pre-emption before or after survey except by your orator, as provided in said act; and by a joint resolution of Congress approved May 31, 1870, being public resolution No. 44, it was resolved and provided that in the event of there not being in any State or Territory in which the said railroad is located at the time of its final location the amount of lands per mile granted by Congress to
135 your orator within the limits prescribed by its charter, then your orator should be entitled under the directions of the Secretary of the Interior to receive so many sections of land belonging to the United States and designated by odd numbers in such State or Territory within ten miles on each side of said road beyond the limits prescribed in said charter as would make up the deficiency to the amount of lands that had been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of said act of July 2, 1864.

And your orator further shows that upon the fixing of the general route of said railroad as aforesaid, namely, on or before the thirteenth day of August, eighteen hundred and seventy, and according to the provisions of section six of said act of Congress, no odd section or any part of an odd section of the public lands for forty miles in width on both sides of the entire line of the general route of said railroad could thereafter be disposed of by the United States or by any one except your orator; but the odd sections and parts of odd sections within said limits of forty miles on both sides of said general route, which had not been previously reserved or disposed of, were thenceforth reserved, appropriated, held, and set apart for the purpose of preserving for and securing to your orator, so far as possible, the entire quantity of lands granted by Congress as aforesaid to aid in the construction of said railroad and telegraph line; that after the filing of the respective maps or plats aforesaid of the general route of said railroad in the office of the Commissioner of the General Land Office, and so soon as that officer had made and prepared maps and records of the General Land Office showing and designating the several limits of the lands reserved for and granted to your orator in respect to the said lines of general route of
136 said railroad, he issued to the register and receiver of the local land offices of the United States at St. Cloud and Alexandria, in the State of Minnesota, within which districts all the lands hereinafter mentioned were then situate, letters of instruction dated respectively September 15th and November 7th, 1870, with maps and diagrams showing the line of the general route of

said railroad through said districts, and the limits of the granted lands in respect thereto, according to the terms and provisions of said act of Congress, and ordering and directing the withdrawal of all the odd-numbered sections within said limits from sale or location, pre-emption, or homestead entry.

That upon the filing of the map or plat of the line of said road as definitely fixed in the office of the Commissioner of the General Land Office, on the 21st day of November, 1871, as aforesaid, the said Commissioner made, adopted, and designated upon the maps and records of said office the limits of the lands granted by Congress to your orator by the act of Congress and the joint resolution aforesaid, namely, the twenty, thirty, and forty miles limit on each side of said line of definite location, the first named being the limits of the lands in place, the second the limits of the indemnity lands provided in said act of July 2, 1864, and the third or forty miles being the limits of the further indemnity lands granted by the joint resolution of May 31, 1870; and there was not in said State of Minnesota, at the time of the definite location of said railroad as aforesaid, including all the lands hereinafter described, the amount of lands per mile granted by Congress to your orator as aforesaid within the limits prescribed by its charter, the said act of July 2, 1864; nor was there then nor is there now in said State of Minnesota, including all the lands hereinafter mentioned and described, within
137 the said forty miles limits on each side of said railroad, that amount of lands per mile not granted, sold, occupied by homestead settlers, pre-empted, or otherwise disposed of; and all the odd-numbered sections and parts of sections between the aforesaid limits of thirty and forty miles on each side of said railroad in the State of Minnesota not sold, occupied by homestead settlers, or pre-empted at and previous to the definite location of said road, and the filing of the plat thereof in the office of the Commissioner of the General Land Office as aforesaid, are and will be required and are not sufficient to make up the deficiency of the lands in place granted by Congress to your orator as aforesaid to the amount of the said lands in place that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of in said State subsequent to the passage of the said act of July 2, 1864.

And your orator shows unto the court that by the said act and joint resolution of Congress your orator is equitably entitled to and is the equitable owner of, and of right and in equity ought to have, the legal estate and title in and to all the odd-numbered sections and parts of sections of the public lands in the State of Minnesota lying and being west of the tier of townships in range thirty-two west of the fifth principal meridian, and within lines drawn on each side of said railroad, at the distance of twenty miles therefrom, as near as may be, so as to conform to the nearest boundaries of the legal subdivisions of the public lands, according to the designations of said limits made as aforesaid by the Commissioner of the General Land Office, and also all the lands in said State in alternate sections and parts of sections designated by odd numbers west of said tier of townships and between the said twenty and forty miles limits

on each side of said railroad, so as to conform to the legal
138 subdivisions of the public lands, and as said limits were made and designated by the Commissioner of the General Land Office as aforesaid, as indemnity for the said lands in place granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of subsequent to the passage of the said act of Congress approved July 2, 1864; and all the lands hereinafter particularly mentioned and described by reference to the schedule thereof, hereto annexed, are embraced and contained within the boundaries aforesaid and are part of the said lands in alternate sections and parts of sections designated by odd numbers of which your orator is the equitable owner as aforesaid, and to which and the legal estate and title therein and thereto your orator is equitably and of right entitled, as hereinbefore shown, under and according to the said act and joint resolution of Congress; and no part of said lands is mineral, but the same and every part thereof, at the time the line of your orator's said railroad was definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office, were free from pre-emption or other claims or rights not reserved, sold, granted, or otherwise appropriated, and the United States had full title thereto, excepting only the reservation, grant, and appropriation thereof for and to your orator, as hereinbefore set forth and alleged.

And your orator further shows unto the court that by section one of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3,
1857, there was granted to the Territory of Minnesota for the
139 purpose of aiding in the construction of certain railroads therein specified, one of which was a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, with a branch, via Saint Cloud and Crow Wing, to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory might determine, every alternate section of land designated by odd numbers for six sections in width on each side of said roads and branches, and wherein it was provided that the said Territory or future State might select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest the tiers of sections above specified, so much land in alternate sections or parts of sections as should be equal to such of the said granted lands as the United States would have sold or appropriated or to which the rights of pre-emption attached when the lines or routes of said roads and branches were definitely fixed, and wherein it was further provided that the land to be so located should in no case be further than fifteen miles from the lines of said roads and branches and selected for and on account of each of said roads and branches.

That by an act of the Legislative Assemby of the Territory of

Minnesota approved May 22, 1857, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," the Minnesota and Pacific Railroad Company was made and created
140 a corporation for the purpose of constructing, operating, and maintaining the railroad and branch last above mentioned, namely, a railroad from Stillwater, by way of St. Paul and St. Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood river, with a branch from St. Anthony, via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of the Pembina river; and for the purpose of aiding in the construction of said railroad and branch all the interest of said Territory or future State in or to the lands granted by the United States as aforesaid to aid in the construction of a railroad from Stillwater, by way of Saint Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch, via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, agreeably to the terms of the act of Congress aforesaid approved March 3, 1857, was by said act of the Legislative Assembly of the Territory of Minnesota granted to said Minnesota and Pacific Railroad Company. The seventeenth section of the act required the company to report to the Governor of said State from time to time the location and designation of the route and line of the railroad and branch as fast as the same should be definitely located and established.

That subsequently the said Minnesota and Pacific Railroad Company, by a trust deed or mortgage bearing date the thirty-first day of July, eighteen hundred and fifty-eight, and executed under its corporate seal, granted and conveyed, by way of mortgage, to the trustees therein named the said railroad from Stillwater to Breckenridge and branch from Saint Anthony, via Anoka, Saint Cloud, and Crow Wing, to St. Vincent, with all the alienable franchises of said last-named corporation and all the right, title, interest, claim,
141 or demand which it then had or might thereafter acquire in or to the lands granted to the Territory of Minnesota by the said act of Congress approved March 3, 1857, for the purpose of aiding in the construction of said railroad and branch to secure the payment of an issue or issues of bonds intended to be issued and which were issued by the said Minnesota and Pacific Railroad Company; that the State of Minnesota, having become the holder and owner of several of the said bonds, amounting to about six hundred thousand dollars, caused the said mortgage to be foreclosed under the power of sale therein contained, and became the purchaser of the said mortgaged railroads, franchises, lands, and premises on the twenty-third day of June, eighteen hundred and sixty, at and for the sum and price of one thousand dollars; and subsequently the said Minnesota and Pacific Railroad Company, by its deed executed

by the Hon. Alexander Ramsey, Governor of said State, as the attorney-in-fact of said last-named corporation, and bearing date the sixteenth day of October, eighteen hundred and sixty, granted, conveyed, and assigned to the said State of Minnesota all right and equity of redemption of said corporation in and to the said mortgaged property, rights, privileges, and franchises, as described in said trust deed or mortgage dated the thirty-first day of July, eighteen hundred and fifty-eight.

That the Legislature of said State of Minnesota, by an act entitled "An act to facilitate the construction of the Minnesota and Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, enacted that all the rights, benefits, privileges, property, franchises, and interests of the Minnesota and Pacific Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, agreement, or thing by the
142 said company theretofore done or suffered (meaning the said last-mentioned trust deed or mortgage and the said conveyance of the equity of redemption), or by virtue of any law of the State or the constitution thereof or of the former Territory of Minnesota, or by reason of any sale of the same or any part thereof by the Governor of the State on the twenty-third day of June, eighteen hundred and sixty, and bid in and purchased for the benefit of the State, be, and the same were thereby, granted to certain persons therein named, their associates and successors, on the terms and conditions in said act provided. By section two of said last-named act all the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Minnesota and Pacific Railroad Company by the aforementioned act of said Territory approved May 22, 1857, were purported to be continued and granted to and vested in the said persons named in said act, and by said section two of said act approved March 10, 1862, it was further enacted that the said persons therein named, and their associates and successors, should thereafter be known as the Saint Paul and Pacific Railroad Company, and by that name may sue and be sued and have and exercise all the powers, rights, and privileges which theretofore pertained to the said Minnesota and Pacific Railroad Company. By section six of the same act, for the purpose of aiding in the construction of the Saint Paul and Pacific railroad and the branch thereof, all the interest of the State, present and prospective, in and to any and all the lands granted by Congress to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to
143 the navigable waters of the Red River of the North, agreeably to the terms of the said act of Congress approved March 3, 1857, were granted to the said Saint Paul and Pacific Railroad Company, conditioned that said land be applied to the construction and equipment of said road and for no other purpose whatever.

That Congress passed a joint resolution entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," approved July 12, 1862, as follows: "Whereas by an act of Congress approved March 3, 1857, there was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater, via St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, the northwestern terminus of which was fixed by the Legislature of said Territory at St. Vincent; and whereas it is now believed that the public interests require a change of location of a part of said branch road: Therefore be it resolved, etc., That in lieu of that part of the railroad grant to Minnesota Territory by act of Congress March 3, 1857, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided this resolution take effect from the filing in the General Land Office of the acceptance by the
144 authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant as authorized by the said act of March 3, 1857, being by the said acceptance disencumbered of the railroad grant, shall be dealt with as other public lands of the United States."

That the State of Minnesota, by an act of its Legislature approved March 6, 1863, whereof a copy duly authenticated under the seal of said State was filed by the Governor in the General Land Office on the 26th day of February, 1864, accepted the said substitution of lands according to the provisions of said joint resolution of July 12, 1862, and designated the route of such new branch line, and by section two of the same act authorized the St. Paul and Pacific Railroad Company to construct and operate said new branch railroad, having its southwestern terminus at or above some point opposite the town of St. Cloud, upon the then existing branch of the said The Saint Paul and Pacific railroad, and extending thence in a northeasterly direction by such route as it might select to the navigable waters of Lake Superior, at or near the mouth of Pigeon river, by way of Duluth; and by said section two of the act last aforesaid it was further enacted that the said The Saint Paul and Pacific Railroad Company should be entitled to have, receive, and hold and there was thereby granted to it all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by said joint resolution of Congress, provided and upon the express condition that the grants and franchises thereby conferred should in nowise inure to the line of road then located or constructed or thereafter to be located or constructed under the powers of the

act of incorporation of the said Saint Paul and Pacific Railroad Company.

That by operation of the said joint resolution of Congress
145 approved July 12, 1862, and said act of the Legislature of the State of Minnesota approved March 6, 1863, and the acceptance of the provisions thereof by the said Saint Paul and Pacific Railroad Company, as hereinafter stated, all the lands granted by Congress to the Territory or State of Minnesota pertaining to and for the purpose of aiding in the construction of the said branch railroad from the intersection of the tenth standard parallel with the fourth guide meridian to St. Vincent, on the Red River of the North, reverted to the United States and again became a part of the public domain, to be dealt with as the other public lands of the United States, free of and clear from any grant, reservation, appropriation, or other disposition thereof theretofore made.

That by the eighth section of an act of the Legislature of said State entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved February 6, 1864, the said company was authorized and empowered to construct, maintain, and operate its said new branch railroad from some point at or above St. Cloud to the westerly end of Lake Superior, and for that purpose to have and exercise all the rights, immunities, privileges, and franchises conferred in and by its charter, and which are applicable to any other portion of its road or branch, by which enactment the northeasterly terminus of said branch was changed from the mouth of Pigeon river to the westerly end of Lake Superior, and the corporate powers and franchises granted to said company by its charter were extended to said new branch railroad. Although the land grant applicable to the said branch road from St. Cloud, by the way of Crow Wing, to St. Vincent was withdrawn by said joint resolution of Congress of July 12, 1862, and said act of the Legislature of Minnesota of March 6, 1863, north of the tenth stand-
146 ard parallel and west of the fourth guide meridian, yet the right to construct and operate the railroad to St. Vincent remained, and the said point of intersection, being the northwest corner of township 140, range 31, was and continued to be a point in the line of said railroad as recognized by said joint resolution of July 12, 1862, and by the Legislature of Minnesota in an act entitled "An act to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches," approved March 2, 1865, wherein the line is named "a line from St. Cloud in a northerly direction to St. Vincent."

That by an act of the Legislature of said State entitled "An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company," approved March 4, 1864, the time for the completion of said new branch road to the westerly end of Lake Superior, as limited and prescribed in and by said act of March 6, 1863, was extended one year, provided and on condition that the said Saint Paul and Pacific Railroad Company should, within eight months, accept the terms and provisions of said act of March 6, 1863, and of the said joint resolution of Congress approved

July 12, 1862; and said company, by a resolution of its board of directors, on the 28th day of May, 1864, duly accepted said terms and provisions and on the same day filed its acceptance thereof with the Governor of said State; and your orator alleges that upon the filing of the acceptance by the authorities of the State of the substitution aforesaid in the General Land Office on the 26th of February, 1864, all the lands that had been granted to said State to aid in the construction of said railroad to the Red River of the North lying west of the fourth guide meridian reverted to the United States, as before shown. On the 14th day of November, 1864, the said St. Paul and Pacific Railroad Company adopted a resolution
147 still further affirming said substitution of grants as follows: "Resolved, That there be created and issued under and pursuant to said act twenty thousand shares, two million dollars, of special and preferred stock upon the branch railroad of this company to Lake Superior, which this company is authorized to construct and maintain by virtue of an act of the Legislature of the State of Minnesota entitled, etc., approved March 6, 1873;" and the said reversion to the United States was fully consummated before the passage of your orator's charter, July 2, 1864, at which date no grant whatever existed of any of the lands hereinafter mentioned, or of any lands to aid in the construction of said St. Vincent extension west of the fourth guide meridian; but the same and every part thereof were then, July 2, 1864, free of and clear from all and every grant, reservation, or appropriation made by Congress or any authority of the United States, and were subject to be dealt with as the other public lands; and, in fact, no part of the lands hereinafter mentioned and particularly described in the schedule of lands hereto annexed had ever been granted, appropriated, or in any manner disposed of to or for any person or persons, body or bodies corporate and politic, and otherwise, in any manner or for any purpose, previous to the passage of said act of Congress of July 2, 1864, by which the same were granted to your orator for the uses and purposes and upon the consideration therein expressed.

That by an act of Congress entitled "An act extending the time for the completion of certain railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, 1865, the quantity of lands granted to the State of Minnesota by the act of March 3, 1857, was increased to ten sections per mile for each of the railroads and branches in said last-mentioned act described,
148 subject to any and all limitations contained in said act of March 3, 1857, and subsequent acts and as thereafter provided in said act of March 3, 1865, and thereby also the limits of the indemnity lands were extended to twenty miles from the line of the roads. By section third of said last-named act of Congress it was further enacted "That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operations of this act, except so far as may be found necessary to locate the route of said

road through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States."

And your orator shows unto the court that the lands hereinafter specified and particularly described in the schedule of lands hereto annexed had been, before the passage of said act of Congress approved March 3, 1865, reserved by Congress for the purpose of aiding in an object of internal improvement by the act aforesaid approved July 2, 1864, namely, for the purpose of aiding in the construction of said railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route, being the said railroad and telegraph line of your orator, and were thereby reserved and excepted from the operations of said act of March 3, 1865.

And your orator further shows that by said last-mentioned act, March 3, 1865, section seven, it was made the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of said act as soon as the Governor of said State of Minnesota should file or cause to be filed with him maps
149 designating the routes of said roads and branches; and by section nine of said act it was further enacted that the provisions thereof shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the aforesaid joint resolution approved July 12, 1862, notwithstanding the vacation thereof by said State, as though said joint resolution had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated.

That by an act of Congress entitled "An act relating to lands granted to the State of Minnesota to aid in constructing railroads," approved July 13, 1886, section one, it was enacted "That whenever it shall appear that the United States have sold or disposed of any lands granted to the Territory or State of Minnesota for the purpose of aiding in the construction of railroads, after the definite location of the line of road and before the withdrawal of said lands from sale at the proper local land office, said State may by its agent select, in lieu of the lands so sold or disposed of, from any of the lands of the United States subject to sale, being odd-numbered sections within twenty miles of the line of the proper road, a quantitiy of land equal to that so sold or disposed of, and the lands so selected shall be substituted for those so sold or disposed of by the United States, and may be disposed of by said State in all respects as if said substituted lands had been parcel of the original grant to the State."

That by the aforesaid act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved February 6, 1864, the said Saint Paul and Pacific Railroad Company was empowered to issue preferred and special stock on any portion of its railroad, and to make arrangements with the holders of such stock for the
150 administration of such portion of said railroad, and for a separate organization to exercise, in respect to the portion of the road to which such special stock pertained, all the powers of the

company; and thereupon such proceedings were had that a separate organization was so made in respect to that portion of said railroad extending from said Saint Paul and St. Anthony to Breckenridge, with a branch from St. Anthony to Watab, in the county of Benton, which organization became and was, under and in pursuance of the laws of the former Territory and present State of Minnesota, a corporation by the corporate name of the First Division of the Saint Paul and Pacific Railroad Company, and the other and remaining portions or parts of said railroad or branches thereof remained to the said Saint Paul and Pacific Railroad Company, and said last two mentioned corporations were and are entirely distinct and separate organizations and corporations to all intents and purposes whatsoever.

That by section two of an act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved March 2, 1867, it was provided that if twenty miles of said road extending from Lake Superior to a point at or above St. Cloud shall not have been put into operation with the cars running thereon by the second day of March, eighteen hundred and seventy, the lands appertaining thereto shall revert and be passed over to the Minneapolis and St. Cloud Railroad Company, and by section three it was enacted that the same shall be deemed and held to be a public act and take effect from its passage. The said Minneapolis and St. Cloud Railroad Company was also a corporation created and existing under the laws of the State of Minnesota, and authorized by its charter to locate,
151 construct, operate, and maintain a railroad within the State of Minnesota from St. Cloud to the westerly end of Lake Superior, and had the power to take, receive, and enjoy the said grant of lands applicable to the construction of a railroad between said termini, in accordance with the said joint resolution of Congress approved July 12, 1862.

And your orator further shows unto the court that the said St. Paul and Pacific Railroad Company never constructed any part of said branch railroad to Lake Superior or any part of said branch railroad from St. Cloud to the intersection of the tenth standard parallel with the fourth guide meridian, or to St. Vincent, except as hereinafter stated; and for several years, including the years 1865, 1866, 1867, and 1868, the said St. Paul and Pacific Railroad Company entirely abandoned the said branch road from St. Cloud to St. Vincent, and, as your orator is informed and believes, during those years neither made any attempt or had any intention ever to construct the same or any portion thereof. This abandonment of said last-named branch railroad was so notorious and so well and fully was it recognized and established that the Legislature of the State of Minnesota, by an act entitled "An act to authorize the First Division of the St. Paul and Pacific Railroad Company to extend its branch line from St. Cloud, via Sauk Centre and Alexandria, to the Red River of the North," approved March 6, 1869, enacted as follows: Section one. "That the First Division of the Saint Paul and Pacific Railroad Company is hereby authorized to survey, locate,

and construct a branch railroad from St. Cloud, via Sauk Centre and Alexandria, to some point on the Red River of the North to be by said company designated," which act was amended by an act of said Legislature approved March 3, 1870, so as to designate the
152 route of said branch railroad from St. Cloud, via Sauk Centre, Osakis, and Alexandria, to some point on the Red River of the North, and the said points and places named and designated in said last-mentioned act of the Legislature are points and places on the line of railroad long afterwards located and partly constructed, as hereinafter stated.

And your orator further shows unto the court that at the time of the passage of the said joint resolution of Congress, approved July 12, 1862, the location of said branch railroad from St. Cloud and Crow Wing to the Red River of the North, at St. Vincent, was fixed and established by law so as to run through the point of intersection of the tenth standard parallel with the fourth guide meridian, said point being the northwest corner of township one hundred and forty north, range thirty-one west, of the fifth principal meridian, and which point is east of a direct line from Crow Wing to St. Vincent. The line or location of said railroad was not authorized or permitted to be changed from said point of intersection, either expressly or by implication or recognition, on the part of Congress or any authority of the United States, until, as it is claimed by the said St. Paul and Pacific Railroad Company, it was by the act of Congress approved March 3, 1871, hereinafter named and referred to.

That in the year eighteen hundred and sixty-nine, at and soon after the time when your orator fixed the general route of its said railroad through the State of Minnesota, as hereinbefore stated, the said St. Paul and Pacific Railroad Company, designing to obtain the benefit and advantage of a connection with said Northern Pacific railroad or desiring or expecting to receive some other advantage thereby, commenced the location of its said branch road westerly from Crow
153 Wing, and in the same general direction as that of the Northern Pacific railroad; and in the months of August and September, 1869, did actually locate upon the ground and afterwards, by resolution, did definitely fix the line of its said branch railroad, commencing at Crow Wing and running almost directly west between Otter Tail and Rush Lakes and thence on a course a little west of north to a point in or near the centre of the east line of township one hundred and forty-two, between ranges forty-one and forty-two, on the south branch of Wild Rice river, in the northern part of Becker county, thus following, for the greater portion of said located and definitely fixed line, the general direction of the route of your orator's said railroad; and the board of directors of the said Saint Paul and Pacific Railroad Company on the 13th day of October, 1869, adopted said location by the following resolution: "Resolved, That the survey and location of the line of the St. Paul and Pacific railroad from Crow Wing to the northern boundary of Becker county, in the State of Minnesota, heretofore made under the direction of D. C. Shephard, engineer of said company, and laid

down and shown upon a map of such survey and location, be, and the same is hereby, ratified, confirmed, and adopted as the location of the line of said railroad from Crow Wing to the centre of the tier of townships numbered one hundred and forty-two; and the president and chief engineer are hereby directed to file said map with the Governor of the State and provide him with a duplicate thereof, to be filed with the Secretary of the Interior." Said maps were filed accordingly on or about the first day of November, 1869, but the Secretary of the Interior refused to approve the same for the reason that the location was not by way of the intersection of the tenth standard parallel with the fourth guide meridian, in which
154 latter case it would have been nearly at right angles with that of the Northern Pacific railroad, and such point of intersection is more than sixty miles east of the point of intersection of said branch line, as located by the board of directors of said St. Paul and Pacific Company, with the said general route of your orator's railroad and is ninety miles east of the present actual crossing of said last-mentioned two roads.

And your orator further shows unto the court that the said St. Paul and Pacific Railroad Company made no further attempt to locate said branch railroad, but entirely and finally abandoned it, and never did any work of construction thereon between Crow Wing and the Red River of the North nor any construction work on its said branch from St. Cloud to Lake Superior, or on any part thereof; and the Legislature of the State of Minnesota, by an act approved March 7, 1870, entitled "An act declaring a forfeiture of lands under an act entitled 'An act to amend the charter of the Saint Paul and Pacific Railroad Company,' approved March second, one thousand eight hundred and sixty-seven," after reciting the provisions of section two of said act of March 2, 1867, and the fact that the said company therein named had failed to comply and had in no manner complied with said provisions, enacted by section one "that the lands appertaining to the said road extending from Lake Superior to a point at or above St. Cloud, by reason of any grant made by the Congress of the United States or of any law of this State, or both, are hereby declared to be forfeited and lost to the said Saint Paul and Pacific Railroad Company, and the said lands are hereby granted to the said Minneapolis and St. Cloud Railroad Company to aid in the construction of their branch road, extending from St. Cloud in the direction of Lake Superior, under the provisions of the charter of said last-named company."

155 And your orator shows unto the court that from and after the said seventh day of March, eighteen hundred and seventy, the said Saint Paul and Pacific Railroad Company had no claim, right, or interest in or to any of the lands along or appertaining to the line of its said branch road from St. Cloud to Lake Superior, and either then or ever had no claim, right, or interest in or to any lands whatever along the line of its said branch road from Saint Cloud to the Red River of the North, as located from Crow Wing to St. Vincent, by the way of Otter Tail or Rush Lake and the east line of township one hundred and forty-two north, and which was the only

location that had then ever been made of the said branch road from Crow Wing to St. Vincent, nor had the said last-named company any inchoate, inceptive, contingent, or floating claim, right, or interest, or shadow thereof, in or to said lands or any part thereof which could ever, under any circumstances, possibly ripen, be perfected, settle, or grow into a title, legal or equitable.

And your orator further shows unto the court that on the 3d day of March, 1871, Congress passed the following act, approved that day, and entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands."

"That the St. Paul and Pacific Railroad Company may so alter its branch lines that instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior it may locate and construct in lieu thereof a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, and from St. Cloud to a point of intersection with a line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to Saint Vincent with the same proportional grant of lands,
156 to be taken in the same manner along said altered lines as is provided for the present lines by existing laws: Provided, however, that this change shall in no manner enlarge said grant, and that this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to market without further legislation;" that said act was not in accord with the legislation of the State of Minnesota, for the reason that the granted lands along the line of the said railroad from St. Cloud to Lake Superior had been, one year before, granted by said State to the Minneapolis and St. Cloud Railroad Company, as hereinbefore stated, according to the provisions of the aforesaid acts of the Legislature of the State of Minnesota, approved, respectively, March 2, 1867, and March 7, 1870; and at the time of the passage of said last-mentioned act of Congress of March 3, 1871, the said acts of the Legislature of the State of Minnesota of March 2, 1867, and March 7, 1870, were, and they still are, in full force, not repealed, altered, or amended; and said act of Congress has not been and is not now in accord with any legislation of said State made or adopted since the passage of said act, for the reason that by said act of Congress Otter Tail or Rush Lake was made an objective point in the line of said branch road, whereas the legislation of said State has made Sauk Centre, Osakis, Alexandria, and Fergus Falls objective points, thus fixing and compelling a line which could not possibly run by or
157 near the said Otter Tail or Rush Lake, as will hereinafter fully appear.

And your orator further shows that after the passage of said act of Congress of March 3, 1871, no legislation was made or adopted

by the Legislature or action taken by any of the authorities of said State in regard to said St. Paul and Pacific Railroad Company or its railroad or the lands granted as aforesaid until more than two years had elapsed, when the Legislature of said State passed an act entitled "An act to extend the time for the completion of certain branch lines of railroad of the St. Paul and Pacific Railroad Company," approved March 11, 1873, as follows: Sec. 1. "That the time for the grading and completion by the Saint Paul and Pacific Railroad Company of its branch lines of railroad, in accordance with the change of such branch lines, authorized by an act of Congress of the United States, passed March 3d, one thousand eight hundred and seventy-one, entitled 'An act authorizing the St. Paul and Pacific Railroad Company to change its line, in consideration of a relinquishment of lands,' be, and the same is hereby, extended to and until the first day of January, A. D. one thousand eight hundred and seventy-four, and the said company, so completing the said line within the time in this act limited, shall have and be entitled to the grant of lands in said act of Congress made and provided and to all and singular the same rights, privileges, immunities, lands, and property as if such lines of railroad had been constructed and put in operation, equipped for business, within the time heretofore limited by law for the same: * * * Provided, That the branch line of said railroad running from St. Cloud to St. Vincent shall run by Sauk Centre, Osakis, Alexandria, Fergus Falls, and Glyndon." And, as before alleged, this line so imperatively
158 and absolutely fixed by the said proviso in said last-cited act of the Legislature of the State of Minnesota as the line on which said branch railroad must be constructed was not the line of said railroad authorized by Congress in its said act approved March 3, 1871.

That from the year eighteen hundred and sixty-nine until the close of the year eighteen hundred and seventy-one no line for said branch railroad by any route from St. Cloud to St. Vincent was adopted by the said St. Paul and Pacific Railroad Company, and the matters and things in relation to said line and the fixing or adopting of the definite location thereof remained during all that time in the condition hereinbefore set forth, namely, a line of definite location existing by authority of law from Crow Wing to the intersection of the tenth standard parallel with the fourth guide meridian; a line actually located upon the ground and adopted by the said St. Paul and Pacific Railroad Company by the resolution of its board of directors on the 13th day of October, 1869, hereinbefore set forth, and prior to said period an actual, total, and complete abandonment of all and every of said lines, both by the said last-named railroad company and the State of Minnesota, so far as relates to any attempt or intention on the part of the said St. Paul and Pacific Railroad Company to construct the same or any portion thereof until after your orator had fixed the general route of its railroad through the State of Minnesota.

That on the thirteenth day of December, 1871, which was after the line of your orator's railroad was definitely fixed and graded

through the State of Minnesota and for the greater part fully constructed and in operation, the said St. Paul and Pacific Railroad Company, at a meeting of its board of directors, held on the day last aforesaid, adopted a resolution of which the following is a
159 copy: "Resolved, That the survey and location of the railroad of this company from St. Cloud to St. Vincent and from Crow Wing to Brainerd, made under the supervision of Chas. F. Morris, chief engineer, be, and the same is hereby, approved and adopted, and that duplicate maps of such survey and location heretofore certified by him and by the president and secretary of this company, dated, respectively, November seventh and November twenty-second, 1871, be placed in the hands of the Governor of the State of Minnesota and the Secretary of the Interior, in compliance with the laws applicable thereto, and that said engineer's report of such location be recorded upon the books of this company." And your orator alleges that it was by said resolution of the said board of directors, and by that only, and not by any act or thing done prior thereto, that any line or route of said branch road, commonly called the St. Vincent Extension of the St. Paul and Pacific railroad, was definitely fixed after the passage of said act of Congress of March 3, 1871, and was the only line or route ever definitely fixed by said St. Paul and Pacific Railroad Company, save that located in the year eighteen hundred and sixty-nine by the way of Crow Wing, and running between Otter Tail and Rush Lakes, to the east line of township one hundred and forty-two, between ranges forty-one and forty-two, as hereinbefore stated.

That the said line so definitely fixed by the said resolution of the board of directors of the St. Paul and Pacific Railroad Company December 13th, 1871, is not on any line authorized by Congress, and is not the line on which said railroad is actually located on the ground and partially constructed; and said railroad, as actually located on the ground and partially constructed, as hereinafter mentioned, is not on any line authorized by Congress, or on the line determined and required by the Legislature of the State of
160 & 161 Minnesota, or on the line indicated by the said map, or by any map filed with the Governor of said State or with the Secretary of the Interior by or on behalf of said last-named company.

That the board of directors of the said Saint Paul and Pacific Railroad Company, on the said 13th day of December, 1871, adopted a resolution which, after the recital of the aforesaid act of Congress, approved March 3, 1871, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," and also reciting a prior resolution of said board accepting the terms and provisions of said act, is in the following words: "Now, therefore, know all men by these presents the St. Paul and Pacific Railroad Company, in consideration of the premises, hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, not including, however, in this release any lands granted by said act to said company along

said new or altered lines." Said release was, on the 19th day of December, 1871, filed with the Secretary of the Interior, and on the 20th day of the same month the map of definite location of the St. Vincent Extension was filed in the office of the Commissioner of the General Land Office; and not until the sixth day of February, 1872, were any lands ever "withdrawn" from sale or location, pre-emption or homestead entry, for or on account of said new line or any line of railroad of the said now existing corporation, the St. Paul and Pacific Railroad Company; on or after which last-named day such withdrawal was made by or in pursuance of the order of the Commissioner of the General Land Office made of that date to the register and receiver of the United States land offices at Alexandria and St. Cloud, Minnesota, in accordance with the re-
162 quirements of section seven of said act of Congress approved March 3, 1865.

That the said First Division of the St. Paul and Pacific Railroad Company, under a contract and lease made by and between it and the said St. Paul and Pacific Railroad Company, bearing date the 1st day of April, 1871, constructed or caused and procured to be constructed certain portions and parts of a railroad extending from St. Cloud to St. Vincent, which line so partially constructed was selected and adopted by the aforementioned corporation, the First Division of the St. Paul and Pacific Railroad Company, or its agent, but not by the said St. Paul and Pacific Railroad Company, except in part by the said resolution of December 13, 1871, and was not the line or any line authorized or recognized by Congress or by the Legislature of the State of Minnesota. The portions of said line so partially constructed are, 1, from St. Cloud to Melrose, in Stearns county, a distance of thirty-five miles, and, 2, from a point in section thirty-five (35), in township one hundred and thirty-eight (138), range forty-six (46), about twelve miles south of the Northern Pacific railroad, to a point in section seven (7), in township one hundred and fifty-four (154), range forty seven (47), about ninety miles, as said road runs north of the Northern Pacific railroad; and the said First Division Company has operated said portion of constructed railroad from St. Cloud to Melrose, but no other part of said railroad has ever been operated, except to a very limited extent, and that chiefly in connection with the work of construction, nor has any equipment ever been furnished therefor, and all work of construction on said railroad was entirely suspended and abandoned in the year eighteen hundred and seventy-two, and has never been resumed.

From Melrose to the said point, about twelve miles south of
163 the Northern Pacific railroad, the said St. Vincent Extension, so called, is entirely unconstructed, except that a part of that distance, namely, from Melrose to Alexandria, about thirty-five miles, was graded in the year 1872, leaving two hundred and thirty miles or thereabouts unconstructed and uncompleted; and it is only by the construction of said partially constructed portions of said line that the said defendants or any of them claim or pretend to claim any right, title, or interest in or to the said described lands or any part thereof.

And your orator further shows unto the court that on the fixing of the general route of the Northern Pacific railroad August 13th, 1870, as hereinbefore stated, under the provisions of the sixth section of your orator's charter all the odd-numbered sections of the lands for forty miles in width on both sides of said line of general route were by operation of law absolutely withdrawn and reserved until the full amount or quantity of lands granted by Congress to your orator in the State of Minnesota should be secured to and obtained by your orator for the purposes specified in said act of July 2, 1864; notwithstanding which in the early part of the year 1873 the said Saint Paul and Pacific Railroad Company, after its entire abandonment of the work of construction of its road, began to assert a prior claim to a portion of said lands so withdrawn and reserved for and granted to your orator, said claim of priority being asserted on a pretence of said St. Paul and Pacific Railroad Company that its right thereto took effect from and under and related back to the said act of Congress approved March 3, 1857. The said question as to which of said corporations, your orator or the said St. Paul and Pacific Railroad Company, was entitled to the lands within the conflicting limits of their respective alleged grants was by the said
164 St. Paul and Pacific Railroad Company or in its name brought before the Commissioner of the General Land Office in or about the month of March, 1873, when that officer decided said question in favor of your orator and against the said St. Paul and Pacific Railroad Company. A selection was made for the purpose of initiating said contest by the last-named company of certain lands within the ten-mile limits of the alleged grant of that company and between the twenty and thirty mile limits of the lands granted to your orator, embracing about nineteen hundred and twenty acres. An appeal was taken by said St. Paul and Pacific Company from the said decision of the Commissioner to the Secretary of the Interior, who, on the 13th day of May, 1873, decided that the lands then in controversy should be "awarded to the said St. Paul and Pacific Railroad Company upon her showing that she has fully complied with the law in the construction of her road." The Secretary in his said decision held that the fixing of the general route of the Northern Pacific railroad did under the sixth section of your orator's charter exempt the odd sections for forty miles in width on both sides of the road from sale, entry, or pre-emption, but that the said sixth section did not prohibit an appropriation of the lands for the satisfaction of a prior railroad grant, and that the said act of Congress approved March 3, 1871, is an amendment of the act of March 3, 1857, and should be construed as though it were inserted in that act, and when thus read the lands then in controversy were not reserved to your orator by the act of July 2, 1864, before the passage of the act of March 3, 1871, and are not within its terms. The Secretary says: "Under these circumstances I must overrule the objection and leave the parties to their remedy in the courts, if they desire to pursue the subject further." The
165 said decision of the Secretary of the Interior was arrived at and made through mistakes in the law of the case on every

point, and through ignorance, mistakes, and misapprehension of the facts, and was not deemed by him or the Department to be final. Within two months after said decision of the Secretary the Commissioner of the General Land Office, under date July 9th, 1873, in an official communication to the register and receiver of the United States land office at Oak Lake, Minnesota, a new district formed out of the Alexandria district and embracing some of the lands hereinafter mentioned, referring to the said decision of the Secretary, says: " * * * I have to state that these lands were withdrawn by act of July 2, 1864, along the entire line in Minnesota from August 13th, 1870, without requiring any notice on the part of this office." * * * And the Secretary himself, in answer to an application made to him on the part of the said St. Paul and Pacific Railroad Company, long after the rendering of his said decision, asking to have proceedings instituted to cancel and set aside certain patents for lands within said conflicting limits, but not included in this action, which had been issued by the United States to your orator, directed the Commissioner of the General Land Office, under date of April 3, 1874, to inform the applicant that "the right of the St. Paul and Pacific Railroad Company is not, in my (the Secretary's) opinion, so entirely clear as to ask the institution of such proceedings, and that the parties will accordingly be left to the remedies afforded by the courts."

That pursuant to said decision of the Secretary of the Interior there has been issued to the State of Minnesota a patent of the United States, under the seal of the General Land Office and
166 bearing date the fourteenth day of January, eighteen hundred and seventy-five, purporting to convey to the said State, for the use and benefit of the said Saint Paul and Pacific Railroad Company, its successors and assigns, in fee simple, a large amount and quantity of lands, being, with divers others, such portion of the public lands of the United States in odd-numbered sections granted to and inuring to the benefit of your orator under the aforesaid act of Congress approved July 2, 1864, and said joint resolution of Congress approved May 31, 1870, as is contained within the forty-mile limits of the lands granted to your orator as aforesaid, as said limits were made and designated by the Commissioner of the General Land Office, and also within the twenty-mile limits of the alleged and pretended grant claimed by the said St. Paul and Pacific Railroad Company, as the same are marked and designated on the maps of the General Land Office, with respect to the line of the said so-called St. Vincent Extension; as indicated by the map filed on the part of said last-named company by the Governor of said State in the Department of the Interior on the 19th day of December, 1871, as aforesaid; except such parts and parcels thereof as had been previously conveyed to your orator by patent and the lands within the ten-mile limits of the said St. Paul and Pacific Railroad Company, according to said maps of the General Land Office, opposite to and coterminous with the uncompleted portions of its road from Melrose to a point about twelve miles south of Glyndon, on the Northern Pacific railroad, the said lands being particularly mentioned and

described in the schedule hereto annexed marked "schedule of lands, Exhibit A," and made part of this bill. All of said lands are and for a long time past have been in the possession and under the control of your orator, and the same are of the value of
167 and are worth over one million of dollars. The only claim which the said St. Paul and Pacific Railroad Company or the State of Minnesota has or can have to the said lands or to any of them is by, through, or under the said act of Congress approved July 3, 1871, which act does not apply to the line of railroad actually located and partly constructed as aforesaid or to any line ever adopted or fixed by the said Saint Paul and Pacific Railroad Company, and was enacted long after the grant of said lands to your orator and after the fixing of the general route of the Northern Pacific railroad and the withdrawal of said lands for the last-mentioned railroad, as hereinbefore set forth.

And your orator shows unto the court and charges that the State of Minnesota has the naked legal title to said lands, with the exception of two or three small parcels thereof, for which your orator has a patent from the United States, evidently named in said patent to the State through a clerical error, and the said Hon. George P. Wilson, attorney general, is made a party defendant to this bill as the legal representative of said State, that thereby the State of Minnesota and the Governor thereof may have notice of the pendency of this suit and be bound by the order and decree of the court herein.

And the said defendants, Horace Thompson, George L. Becker, and William G. Moorhead, are trustees named in a certain mortgage made by the said corporation, the Saint Paul and Pacific Railroad Company, and bearing date the first day of April, eighteen hundred and seventy-one, whereby the said corporation conveyed, by way of mortgage, to the said trustees all the right, title, and interest it then had or might thereafter acquire in the lands granted to the former Territory and present State of Minnesota by certain acts of Congress and which had been granted or should or might be granted by said State to aid in the construction of the lines of railroad of the said Saint Paul and Pacific Railroad Company in trust and upon the conditions in said mortgage declared; and your orator is informed and believes that the said Thompson, Becker, and Moorhead, as trustees aforesaid, claim some interest adversely to your orator in said lands or in some part of them under said mortgage or deed of trust.

And your orator shows unto the court, on information and belief, and so alleges, that the said St. Paul and Pacific Railroad Company, through certain of its agents and representatives or others acting in its name, wrongfully, unlawfully, and fraudulently procured, obtained, and caused the issuing of said patent to the State of Minnesota, having full knowledge and actual notice of all the facts hereinbefore set forth, with the intent to defraud your orator and to obtain said lands for its own use and benefit and for the use and benefit of others combining and confederating to that end and
168 for that purpose, with the said agents and representatives of

said last-named company or others acting in its name; and the said defendants claim the said lands adversely to your orator.

And your orator has not done, caused, or permitted any act or thing whatsoever by which its claim, right, title, or interest in and to said described lands have been in any manner impaired or defeated, but the said lands and every part thereof in equity and of right belong to your orator, and your orator ought to have the legal title thereto; and the said St. Paul and Pacific Railroad Company has been frequently applied to on the part of your orator and requested to execute the necessary instruments to convey, assure, and affirm to your orator, its successors and assigns, the full and perfect legal title to the hereinbefore mentioned lands, but the said Saint Paul and Pacific Railroad Company refuses so to do and persists in asserting its said pretended claim to said lands adversely to your orator.

And your orator alleges that the said St. Paul and Pacific Railroad Company is endeavoring to obtain and procure from the Governor of said State a conveyance of the said lands patented to the State as aforesaid and of the whole thereof, and by its said agents and representatives is threatening and giving out that it will speedily obtain and procure such conveyance, and is also in like manner threatening, proposing, and endeavoring to sell, assign, and dispose of large portions of said lands or of some of said alleged interest therein and to encumber other large portions thereof; and your orator believes it will do so, unless enjoined and restrained by this honorable court; and if the St. Paul and Pacific Railroad Company be permitted or suffered to obtain such conveyance, or to sell, assign, or dispose of the lands hereinbefore described or any part thereof or of any alleged interest therein, or to encumber the
169 same or any part thereof, the said right, title, and interest of your orator therein and thereto will be further clouded and will be complicated, embarrassed, and defeated and your orator thereby irreparably injured, and your orator is wholly without remedy at law.

In consideration of the premises, and to the end, therefore, that the said defendants, without oath, their answers and the answer of each of them on oath being thereby waived, may full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and as particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, and that the said lands described in said schedule of lands hereto annexed and every part thereof be determined, adjudged, and decreed to be the lands of and belonging to your orator, and that your orator is equitably entitled to the legal title thereto; that the said defendants or any or either of them are not equitably or legally entitled to said lands or any part thereof or any interest therein; that the legal title to said lands is held in trust for your orator; that the defendants and each and every of them be ordered, adjudged, and decreed to make, execute, and deliver or cause to be made, executed, and delivered to your orator such good and sufficient, necessary, and proper deed and deeds, instrument and instruments, as shall be ordered and

directed by the court conveying, releasing, assuring, and confirming to your orator the full and perfect legal title to the said lands in fee simple, absolute, free of and clear from all and every lien, encumbrance, charge, act, or thing made, done, caused, suffered, or permitted by the said defendants or any of them, or by any person or persons, body or bodies politic and corporate, or otherwise, claiming under, through, or by the said defendants or any of them, whereby the said claim, right, title, or interest of your orator could be impaired.

170 And that until the execution and delivery of such instrument and instruments the judgment and decree of the court in the premises stand and operate as such conveyance, release, assurance, and confirmation, and that the defendants and each of them and their and each of their agents, officers, attorneys, counsellors, and representatives be, perpetually as well as temporarily and until the further order of the court, enjoined and restrained from obtaining or procuring, accepting or receiving, and from endeavoring to obtain or procure any patent, grant, deed, or other conveyance of said lands or any part thereof adversely to your orator or otherwise than to and for your orator, and from causing, procuring, permitting, counselling, or aiding any other person or persons, corporate or otherwise, to procure or obtain such conveyance, and from conveying, selling, assigning, or in any manner disposing of said lands or any part thereof or any alleged interest therein, and from attempting or endeavoring so to do, and from in any manner charging or encumbering said lands or any part thereof, and from attempting or endeavoring so to do.

May it please the honorable court to grant unto your orator, as well the writ of injunction issuing out of and under the seal of this court, commanding, enjoining, and restraining the said defendants, their and each of their agents, officers, attorneys, counsellors, and representatives as aforesaid, as also the writ of subpœna to be issued out of and under the seal of this court, to be directed to the said defendants, The St. Paul and Pacific Railroad Company and Horace Thompson, George L. Becker, and William G. Moorhead, trustees, and the Honorable George P. Wilson, attorney general of the State of Minnesota, commanding them, at a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable court, then and there to answer the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorble court shall seem meet and shall be consistent with equity.

171

GEO. GRAY,
Solicitor and of Counsel for Complainant.

UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

George Gray, of the city of St. Paul, in said district, being duly sworn, says that he is the attorney general of the Northern Pacific Railroad Company, the complainant in the foregoing bill; that he

has actual knowledge of the facts stated and alleged in said bill, so far as the same are based on records and documents; that there is no officer of the said complainant at present within the said district, to the knowledge or belief of deponent; that he has read the foregoing bill by him subscribed as the solicitor for the complainant, and that the same is true of his own knowledge except as to the matters therein stated on the information and belief of the complainant, and as to those matters he believes it to be true.

GEO. GRAY.

Subscribed and sworn to before me this 21st day of June, A. D. 1875.

[Seal of the Court:] H. E. MANN, *Clerk.*

172 EXHIBIT A.

Schedule of Lands.

(All the lands embraced in the patent issued by the United States to the State of Minnesota for the use of the Saint Paul and Pacific Railroad Company, and bearing date the 14th day of January, 1875, that are within the forty-miles limits of the Northern Pacific railroad, as said limits were made and designated by the Commissioner of the General Land Office, a particular description whereof is annexed to the copy of the original complaint certified to this court and on file therein.)

[Endorsed:] D. C., file 36.

172½ And afterwards, to wit, on the 30th day of June, A. D. 1875, a petition praying leave to substitute certain parties defendant was filed in the words and figures following:

173 United States Circuit Court, District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, GEORGE L. Becker, Wm. G. Moorhead, and Horace Thompson, Trustees; Hon. Geo. P. Wilson, Att'y General of the State of Minn., and Jesse P. Farley, Receiver.

To the hon. the judges of the circuit court aforesaid:

174 Your petitioners, Jacob S. Wetmore, of the State of New Jersey, and Thomas Denny and Thomas W. Pearsall, of the State of New York, respectfully represent—

That under and pursuant to the 14th article of the mortgage or trust deed mentioned and referred to in the second section of the bill of complaint herein authority was given to the holders of the bonds secured in said trust deed to remove the trustees therein named and appoint others in their place, and that pursuant to article 11 of said trust deed a meeting of the bondholders was duly called on the 2nd day of April, 1875, in the city of New
175 York, at which meeting action was taken and proceedings had, whereby the trustees named in said trust deed, Horace

Thompson, George L. Becker, and Wm. G. Moorhead, were duly removed from their position as such trustees and your petitioners duly elected and appointed in their place, which said trust deed and the proceedings and action of said bondholders are herewith submitted to the court.

Wherefore your petitioners ask that they may be substituted as parties defendant in this action in place of the said Thompson, Becker, and Moorhead, with leave to defend the same and protect the rights of the bondholders under said trust deed, and for
176 such other and further relief as to the court may seem meet.

JACOB S. WETMORE,
THOMAS DENNY,
THOMAS W. PEARSALL, *Petitioners,*
By GEO. L. OTIS AND
GILMAN, CLOUGH & LANE,
Their Attorneys.

Filed June 30th, 1875.

H. E. MANN, *Clerk.*

177 Pursuant to which said petition the following order was entered substituting Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, parties defendant, in the place of W. G. Moorhead, Horace Thompson, and George L. Becker:

178 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1875.

JUNE 29, 1875.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

It appearing to the court on the petition of Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall that they have been appointed trustees under the mortgage of April 1st, 1871, in place of W. G. Moorhead, Horace Thompson, and George L. Becker,
179 removed, they are hereby substituted as defendants in place of said former trustees in this suit, and are required to plead by rule day in August next.

180 And afterwards, to wit, on the 10th day of August, A. D. 1875, the joint and several answer of Jacob S. Wetmore *et al.* was filed in the words and figures following:

Joint and Several Answer of Jacob S. Wetmore et al.

181 United States Circuit Court, District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD CO.
vs.
THE ST. PAUL AND PACIFIC RAILROAD CO. *et al.*

Joint and Several Answer of Jacob S. Wetmore et al.

Geo. L. Otis and Gilman, Clough & Lane, defendants' solicitors. Filed August 10, 1875.

H. E. MANN, *Clerk.*

182 The United States Circuit Court, District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, Thomas Denny, and Thomas N. Pearsall, Trustees and Defendants by Substitution for Horace Thompson, George L. Becker, and William G. Moorhead, Late Trustees, &c.; Hon. George P. Wilson, Attorney General of the State of Minnesota, and Jesse P. Farley, Receiver, Defendants.

Joint and Several Answer of Jacob S. Wetmore, Thomas Denny, Thomas N. Pearsall, and Jesse P. Farley.

The joint and several answer of Jacob S. Wetmore, Thomas Denny, and Thomas N. Pearsall, trustees, and Jesse P.
183 Farley, receiver, four of the defendants to the bill of complaint of the Northern Pacific Railroad Company, complainant, the said Jacob S. Wetmore, Thomas Denny, and Thomas N. Pearsall having been substituted as parties defendant by order of court for and in place of Horace Thompson, George L. Becker, and William G. Moorhead.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or may be material or necessary for them to make answer unto, they, these defendants, severally answering, say:

They admit that the complainant is a corporation, as in said bill of complaint alleged, and is the owner of said Northern Pacific Railroad; but they deny that it is the owner of the lands mentioned and described in said bill of complaint or of any part thereof; and they admit that about 450 miles of said road has been constructed and equipped in the State of Minnesota and Territory of Dakota, as in said bill alleged.

And these defendants, further severally answering, say that they or any or either of them, to the knowledge or belief of the others or other of them, do not know and have never been informed, save by the said complainant's bill, and cannot set forth as to their belief or otherwise, whether the complainant fixed the general route of its said railroad in the years 1869 and 1870 or when it so fixed its general route, or whether on the 13th day of August, 1870, or at what other time, or whether it ever filed a map or plat of said general
184 route in the office of the Commissioner of the General Land Office, as in said bill of complaint alleged or otherwise, or whether the Secretary of the Interior thereupon or ever ordered the withdrawal of the odd sections of lands for the benefit of the complainant, as alleged in said bill of complaint or otherwise, or whether the complainant amended its said line of general route or filed a corrected map or any map thereof in said General Land Office on the 8th day of October, 1870, or at any other time, or whether on the 12th day of the same month or at any other time the Secretary of the Interior ordered a withdrawal of lands, as aforesaid or otherwise, conformably to said corrected line, or whether on the 21st day of November, 1871, or at what time, if at all, the complainant filed a map or plat of the line so definitely fixed in the office of the Commissioner of the General Land Office, or whether the same was approved by the said Secretary of the Interior, or whether said road has been constructed on such line of definite location as the same is indicated on said map, or whether the said railroad so constructed was accepted or approved by the President of the United States in accordance with the provisions of said section 4 of said act of Congress of July 2, 1864, as in said bill of complaint alleged or otherwise; but they severally allege and say that said line of said railroad was not so definitely fixed, nor was said map thereof so approved or filed until long after the line of the defendant, The Saint Paul & Pacific Railroad, was definitely located and fixed and the map thereof filed as hereinafter alleged.

These defendants further severally say they admit that complainant has constructed and equipped said railroad as in said bill of complaint alleged, and that by section three of said act of
185 Congress there was granted to the complainant for the purposes therein stated certain lands, as therein stated, and that said section three is substantially as in said bill of complaint alleged, except that in and by said section three it was further provided as follows, viz: "That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States as far as the routes are upon the general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided further, That the railroad company receiving the previous grant of land may assign their interest to said Northern Pacific Railroad Company or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act."

And these defendants severally admit that by section six of said act of June 2, 1864, it was enacted as in said bill alleged, and that

by said joint resolution of Congress, approved May 31, 1870, being public resolution No. 44, it was resolved and provided as in said bill alleged.

And these defendants further severally say they deny that upon the fixing of the general route of said railroad on the 13th day of August, 1870, or at any other time, either according to the provisions of said section 6 or otherwise, no odd section of the public lands within said 40-mile limits could thereafter be disposed of by the United States or by any one except the complainant, and they deny that the said odd sections or any of them were thenceforth reserved, appropriated, held, or set apart for the complainant, as alleged in said bill of complaint or otherwise.

These defendants further severally say that they or any or either of them, to the knowledge or belief of the others or other of them, do not know and have never been informed save by
186 the said complainant's bill and cannot set forth as to their belief or otherwise whether, after the filing of the respective maps of such general route in the office of the Commissioner of the General Land Office, or at any other time, he, the said Commissioner, issued to the register and receiver of the local land offices at St. Cloud or Alexandria letters of instruction, or with maps showing the line of the general route of said railroad and the limits of the granted lands, and ordering and directing the withdrawal of the odd-numbered sections within said limits from sale or location, pre-emption or homestead entry, as in said bill of complaint alleged or otherwise, or whether, upon the filing of the map or plat of the line of said road as definitely fixed in the office of the said Commissioner on the 21st day of November, 1871, or at any other time, the said Commissioner made, adopted, or designated upon the maps and records of said office the limits of the lands so granted by Congress as alleged in said bill of complaint or otherwise, or whether there was or was not in said State of Minnesota, at the time of the definite location of said railroad, including the lands in the bill of complaint specified, the amount of lands per mile granted by Congress to the complainant within the limits prescribed in its said charter, or whether there then was or is now in said State, including the lands specified in said bill of complaint within the said forty-mile limits on each side of said railroad, the amount of lands per mile not granted, sold, occupied by homestead settlers, pre-empted, or otherwise disposed of or what amount or quantity or quality of lands, or whether all or any of the odd-numbered sections between the aforesaid limits of 30 and 40 miles on each side of said railroad not sold, &c., previous to the filing of the plat in said Commissioner's
187 office are or will be required, or whether the same are or are not sufficient to make up the deficiency of the lands in place granted by Congress to complainant to the amount of the lands in place that have been granted, sold, reserved, &c., subsequent to the passage of the said act of July 2, 1864, as alleged in said bill of complaint or otherwise.

And these defendants further severally say they deny that by the said act and joint resolution the complainant is in any way enti-

tled to or is in any way the owner of or ought for any reason to have the legal or any estate or title in or to all of the odd-numbered sections or parts of sections of the public lands in the State of Minnesota lying or being west of the tier of townships in range 32 west of the 5th principal meridan or within lines drawn on each side of said railroad at the distance of twenty miles therefrom or to all of the lands in said State in alternate sections designated by odd numbers west of said tier of towns and between the said 30 and 40 mile limits as indemnity lands; and they allege that all the lands specifically designated in the bill of complaint as within the limits last aforesaid belong both in law and equity to the defendant, The Saint Paul and Pacific Railroad Company, and are subject to the lien of the mortgage hereinafter set forth; and they deny that said lands, at the time when complainant's line of road was definitely fixed and a plat thereof filed in said Commissioner's office, were free from pre-emption and other claims or rights not reserved, sold, granted, or otherwise appropriated, and deny that the United States then had full title thereto, excepting only the reservation grant and appropriation thereof for and to the complainant, as in said bill of complaint alleged; and they allege that said lands had long before that time been granted to and the title to the same, both legal and equitable, was in the said Saint Paul & Pacific Railroad Company, and are now subject to the lien of the said mortgage.

188 And these defendants further severally say they admit that Congress passed an act entitled as in said bill of complaint alleged, approved March 3, 1857, granting lands to the State of Minnesota to aid in the construction of certain lines of railroad in said act specified, and which said lines so specified therein are correctly described in said bill of complaint, and that said act is correctly set out in said bill, except in the matter following, viz:

Said section one of said act, among other things, provided: "But in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections or any parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in alternate sections as shall be equal to such lands as the United States have sold or otherwise appropriated or to which the rights of pre-emption have attached as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid: Provided, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads or branches: Provided further, That the lands hereby granted for and on account of said roads and branches severally shall be exclusively applied in the

construction of that road for and on account of which such
189 lands are hereby granted and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: And provided further, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever be, and the same are hereby, reserved to the United States from the operation of this act except so far as it may be found necessary to locate the routes of said railroad and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

And these defendants further severally say they admit that the "Minnesota and Pacific Railroad Company" was made and created a corporation by virtue of the act of the Legislative Assembly of the Territory of Minnesota, approved May 22, 1857, entitled as in said bill of complaint alleged, for the purposes and with the powers therein stated, and that the lands so granted to said Territory or future State by said act of Congress of March 3, 1857, for aid in the construction of certain lines of railroad therein specified were by said act of May 22, 1857, granted to said Minnesota and Pacific Railroad Company, as in said bill of complaint alleged.

And they admit the trust deed or mortgage, bearing date July 31, 1858, executed by said last-named corporation to trustees, as in said bill of complaint the same is described; and they also admit the foreclosure of said mortgage by the State of Minnesota and the purchase by said State of the mortgaged premises, as in said bill of complaint alleged. They also admit that by the act of the Legislature of the State of Minnesota entitled "An act to facilitate the
190 construction of the Minnesota & Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, it was enacted as in said bill of complaint alleged. They also admit that Congress passed a joint resolution entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," approved July 12, 1862, in the words and figures set forth in said bill of complaint. They also admit that the State of Minnesota, by an act of its Legislature approved March 6, 1863, accepted the said substitution of lands according to the provisions of said joint resolution of July 12, 1862, and designated the route of such new branch line, and that section two of said last-named act contains the provisions set forth in said bill of complaint, and that a copy of said last-named act was filed by the Governor in the General Land Office on the 26th day of February 1864, as alleged in said bill of complaint; but they deny that by operation of said joint resolution and of said act of March 6, 1863, and the acceptance of the provisions thereof by the said Saint Paul & Pacific Railroad Company, or for any other reason, all or any of the lands granted by Congress to said State pertaining to the said branch railroad from the said point of intersection of the tenth standard parallel with the

fourth guide meridian to Saint Vincent or pertaining to any other part of said branch railroad reverted to the United States or again became a part of the public domain, as alleged in said bill of complaint or otherwise.

And these defendants further severally say that they admit that by the 8th section of an act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the Saint Paul & Pacific Railroad Company," approved February 6, 1864, the said company was authorized and empowered and the northeastern
191 terminus of said branch was changed as in said bill of complaint alleged; and they further say that by sections six and seven of said last-named act it was provided as follows, viz:

"SEC. 6. The Saint Paul & Pacific Railroad Company shall have the right to relocate the lines of its road and branches so as to run and construct the main line from Saint Anthony by way of Minneapolis to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, and the branch from Saint Anthony to the Red River of the North so as to run and construct the same from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, and it shall not be required of the said company to construct or maintain the said branch road to or by way of Crow Wing."

"SEC. 7. The Saint Paul & Pacific Railroad Company shall complete those portions of their road from Stillwater to Saint Paul and from Saint Anthony by the way of Minneapolis westwardly to the distance of twenty miles within two years, and the remaining portion of the main line and part of the branch line from Saint Cloud to the Red River of the North within five years, and there shall be no forfeiture of any of the lands, property, privileges, rights, or franchises of the said company for a failure to complete the same or any part thereof prior to the times above specified."

And these defendants further severally say they deny that the land grant applicable to the said branch road from St. Cloud by the way of Crow Wing to St. Vincent was withdrawn by said act of March 6, 1863, and said joint resolution of July 12, 1862, north of said tenth standard parallel and west of the fourth guide meridian; but they admit that the right to construct and operate the
192 railroad to St. Vincent remained, and that said point of intersection was the northwest corner of township 140 of range 31. They deny that said point of intersection was ever a point in the line of said railroad, either by force of said joint resolution or by virtue of said act entitled "An act to aid and facilitate the completion of the Saint Paul & Pacific railroad and branches," approved March 2, 1865, whether as alleged in said bill of complaint or otherwise.

And these defendants further severally say they admit the enactment of the Legislature of the State of Minnesota entitled "An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company," approved March 4, 1864, as in said bill of complaint alleged; and they further severally say that they or any or either of them, to the knowledge or belief of the others or other of them, do not know and have never been informed

save by the said complainant's bill and cannot set forth as to their belief or otherwise whether the said company, by a resolution of its board of directors or otherwise, on the 28th day of May, 1864, or at any other time, accepted said terms and provisions, or on the same day or at any other time filed its acceptance thereof with the Governor of said State; or whether, on the 14th day of November, 1864, or at any other time, the said St. Paul and Pacific Railroad Company passed a resolution as set forth in said bill of complaint, or any resolution.

And these defendants further severally say they deny that upon the filing of the acceptance by the authorities of the State of the said substitution in the General Land Office on the 26th day of February, 1864, or any other time, all or any of the lands
193 lying west of the fourth guide meridian reverted to the United States, whether as alleged in said bill of complaint or otherwise, and they deny that such reversion was in any manner consummated before the passage of the complainant's charter of July 2, 1864, and they deny that at that date no grant existed of any of the lands to aid in the construction of the St. Vincent Extension west of said fourth guide meridian, or of any of the lands described in the bill of complaint, and deny that the same or any of them were then, July 2, 1864, free of or clear from all and every grant, reservation, or appropriation made by Congress, or were subject to be dealt with as other public lands, as alleged in said bill of complaint; and they deny the fact to be that no part of the lands in the schedule annexed to complainant's bill had ever been granted, appropriated, or in any manner disposed of to or for any person or persons, body or bodies corporate and politic, previous to the passage of said charter; and they allege that the same had been granted as aforesaid to and were then the property of the said Saint Paul and Pacific Railroad Company.

And these defendants further severally say they admit the enactment by Congress of an act entitled "An act extending the time for the completion of certain railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, 1857, and that by said act the quantity of lands granted to said State of Minnesota by said act of March 3, 1857, was increased to ten sections per mile, as in said bill of complaint alleged, and that by sections three, seven, and nine thereof respectively it was enacted therein as alleged in said bill of complaint; but they deny that the lands described in the schedule to complainant's bill had been in any manner, before the passage of said enactment of Congress of March 3, 1865,
194 reserved by Congress, either by said act of July 2, 1864, or otherwise, for the purpose of aiding in the construction of complainant's said railroad or otherwise, as alleged in said bill of complaint or otherwise; and they also admit the enactment by Congress of the act entitled "An act relating to lands granted to the State of Minnesota to aid in constructing railroads," approved July 13, 1866, and that by section one of said act it was enacted as in said bill of complaint alleged; they also admit that by said act of the Legislature of the State of Minnesota approved Feb. 6, 1864, the

said St. Paul and Pacific Company was empowered to issue preferred stock as therein alleged, and a separate organization as to such stock was provided for, and that the First Division of the Saint Paul and Pacific Railroad Company was thereupon constituted and organized and became a separate corporation, as in said bill of complaint alleged; they also admit the enactment by the Legislature of the State Minnesota of the act entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved March 2, 1867, and that in and by said act it was provided as in said bill of complaint alleged; but they deny that the said Minneapolis and Saint Cloud Railroad Company was or is a corporation, as alleged in said bill of complaint or otherwise, and deny that it had the power to take, receive, or enjoy the said or any grant of lands, whether applicable to the construction of a railroad between said termini, or in accordance with said joint resolution of July 12, 1862, or otherwise.

And these defendants further severally say they admit that said Saint Paul & Pacific Railroad Company never constructed any part of said branch railroad to Lake Superior, or any part from St. Cloud to the said intersection of the 10th parallel with the said 4th meridian; but they deny that for several years, including the
195 years 1865, 1866, 1867, and 1868, or for any of said years or period of time whatever, the said Saint Paul & Pacific Railroad Company in any way or to any extent abandoned the said branch roads from Saint Cloud to Saint Vincent, and deny that during those years, or at any period, said company either made any attempt or had any intention ever to construct the same or any portion thereof; and they say that during all of said time the said company fully intended to construct and complete said line of road and every part thereof as soon as the necessary capital for such construction could be enlisted in the enterprise. They also admit that the State of Minnesota enacted those two certain acts set forth in the bill of complaint—the one entitled "An act to authorize the First Division of the Saint Paul & Pacific Railroad Company to extend its branch line from St. Cloud via Sauk Center and Alexandria to the Red River of the North," approved March 6, 1869, and the other an act amendatory of said act, approved March 3, 1870; but they deny that said acts or either of them indicate any abandonment of said branch railroad or any recognition of such abandonment, as alleged in said bill of complaint or otherwise; that said acts do not relate to the said Saint Paul & Pacific Railroad Company in any manner whatever, but relate exclusively to the said First Division of the Saint Paul & Pacific Railroad Company, a distinct and separate corporation and organization.

And these defendants further severally say they deny that at the time of the passage of the said joint resolution of Congress of July 12, 1862, or at any other time the location of said branch railroad from Saint Cloud and Crow Wing to the Red River of the North, at St. Vincent, was fixed or established by law, or by any authority whatever, so as to run through the point of intersection of the tenth

standard parallel with the fourth guide meridian, as alleged
196 in said bill of complaint or otherwise, and they allege that the same never was made a point in the line of said road by any act of the said Saint Paul & Pacific Railroad Company or in manner whatever; that the same was named in the said joint resolution without any authority whatever from the said railroad company, and merely for the convenience of the framers of the said joint resolution as a convenient landmark for a division of the line of said congressional land grant; that in truth and fact the line from either Crow Wing or Saint Cloud to either Saint Vincent or any point in the northern international boundary by way of the said point of intersection has always been and is now both physically and financially impossible, and was always so claimed by the said Saint Paul & Pacific Railroad Company; and they deny that the line or location of said railroad was not authorized or permitted to be changed from said point of intersection on the part of Congress or any authority of the United States, and they say that the said act of Congress approved March 3, 1865, both expressly and by implication, authorize such change, and that the same was also authorized by the said acts of the Legislature of the State of Minnesota approved respectively February 6, 1864, and March 2, 1865.

And these defendants further severally say they admit the location by the said Saint Paul & Pacific Railroad Company of a line from Crow Wing, running, not directly west, but in a northwesterly course to a point between said Otter Tail and Rush lakes, and thence in a course still more northerly to a point near the center of the east line of town 142, between ranges 40 and 41, and that the same was so located about the time stated in said bill of complaint, but at what precise time they cannot say with greater certainty, and they are informed and believe that said location was adopted
197 by said company, but they cannot say whether the same was so adopted by the resolution of October 13, 1869, set forth in said bill of complaint or by any resolution of said company whatever, and they leave the complainant to make its proofs in regard to such adoption, if any they have; and they admit the filing of a map of such location, and that the said location was for some reason to these defendants unknown disapproved by the Secretary of the Interior; but they deny that the same was so disapproved for any of the reasons set forth in the said bill of complaint; they also admit that said point of intersection is east of the present actual crossing of the complainant's road with the road of the said Saint Paul & Pacific Company, but whether said distance is 90 miles they have no knowledge or information sufficient to form a belief.

And these defendants further severally say they deny that the said Saint Paul & Pacific Railroad Company made no further attempt to locate said branch road or in any manner abandon it, although they admit they did not do any construction thereon between Crow Wing and the Red River of the North; but they allege the fact to be that at the time when the Secretary of the Interior so disapproved of the aforesaid line from Crow Wing northwesterly via Otter Tail and Rush Lakes he granted to the said Saint Paul &

Pacific Railroad Company further time to make explorations and surveys for the final and definite location of its said branch line, and from time to time thereafter extended said time until the same was definitely located on its present line.

And these defendants further severally say they admit the enactment by the State of Minnesota of the act entitled an "An act declaring a forfeiture of lands, &c.," approved March 7, 1870, and the provisions of section one of said act as in the bill of com-
198 plaint alleged; but they deny that from and after March 7, 1870, the said Saint Paul and Pacific Railroad Company had no claim, right, or interest in the lands along the line of its said branch road from Saint Cloud to Lake Superior, and they deny that it had no claim, right, or interest in and to the lands along the line of its said branch road from Saint Cloud to the Red River of the North, and deny that said company had no inchoate, inceptive, contingent, or floating claim, right, or interest in and to said lands, as alleged in said bill of complaint, and they say that said company had a full and complete title to said lands and every part thereof. And these defendants further severally say they admit the enactment by Congress of the act entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March 3, 1871, and that the same is correctly set forth in said bill of complaint, and that at the time of the passage of said act the said acts of the State of Minnesota approved respectively March 2, 1867, and March 7, 1870, were not in express terms repealed or amended; but they deny that the said act of Congress was not in accord with the legislation of the State of Minnesota for any reason stated in said bill of complaint or otherwise, and they allege that said act was so in accord with the legislation of the State of Minnesota; and they allege that said act of Congress of March 3, 1871, was directly in accord with sections 6 and 7 of said act of the State of Minnesota approved February 6, 1864, and with the provisions of the act of March 11, 1873, hereinafter referred to.

And these defendants further severally say that the change of route contemplated by said last-named act of Congress of March 3, 1871, had been previously authorized under the provisions of
199 section 9 of said act of Congress approved March 3, 1865, "the vacation by the State" therein referred to having reference to the change of route authorized by the provisions of the act of the Legislature of the State of Minnesota approved March 2, 1865, wherein Saint Cloud is named as the point of departure for Saint Vincent, instead of Crow Wing, the said Congressional act of March 3, 1865, in effect providing that the grant so renewed is not for the old line from Crow Wing, but for such new line from Saint Cloud as the State had authorized by said of March 2, 1865.

And these defendants further severally say they admit the enactment by the Legislature of the State of Minnesota entitled "An act to extend the time for the completion of certain branch lines of railroad of the Saint Paul and Pacific Railroad Company," approved

March 11, 1873, and that section one of said act is correctly set out in said bill of complaint; but they deny that the route contemplated in the proviso of said last-named act was not the line of said railroad authorized by Congress in its said act of March 3, 1871, and allege that the line so named in said proviso was authorized by and is within the provisions of said act of Congress.

And these defendants further severally say they admit that from the year 1869 until the close of the year 1871 no line for said branch railroad by any route from Saint Cloud to Saint Vincent was adopted by the said St. Paul and Pacific Railroad Company, but they allege that during said time the said company was engaged in the work necessary to be done as preliminary to such definite location, and they deny that during all or any part of said time the matters and things in relation to said line, or that the fixing or adopting of the definite location thereof, remained as in said bill of complaint alleged; and they deny that a line of definite location from Crow Wing to the intersection of the tenth standard parallel
200 with the fourth guide meridian existed by any authority of law or otherwise, and deny that prior to said period or at any time there was an actual, total, complete, or any abandonment of all or any of said lines whatever, either by the State of Minnesota or by said railroad company, so far as relates to any attempt or intention on the part of said company to construct the same or some part thereof, or to any extent or in any way or manner whatever, until after the complainant had fixed the general route of its railroad through the State of Minnesota or until any other time whatever, and they allege that the said lines were never, at any time or in any way or manner or to any extent, either in whole or in part, abandoned, either as in said bill of complaint alleged or otherwise.

And these defendants further severally say they admit that the said St. Paul and Pacific Railroad Company adopted at a meeting of its board of directors, at or about the time stated in the bill of complaint, to wit, December 13, 1871, a resolution adopting the survey and definite location of its said railroad from Saint Cloud to Saint Vincent, and which resolution contained the matters stated in said bill of complaint; but they allege that said resolution was so adopted before the line of the complainant's said railroad was definitely located through said State and not afterwards, as alleged in said bill of complaint, and they further allege that the line of definite location of the said railroad of the said Saint Paul and Pacific Railroad Company referred to in the said resolution had been so definitely located and established several months prior to the said 13th day of December, 1871, and that said line had been and was so definitely located long before the line of the complainant's said railroad or any part thereof had been definitely located through said State and long before
201 any plat of such or any definite location had been filed in the office of the Commissioner of the General Land Office, as provided in the charter of the said complainant, and they deny that it was by said resolution or any resolution of the said or any board of directors that the line or route of said branch road called the Saint Vincent Extension of the Saint Paul and Pacific Railroad Company

was definitely fixed by said company after said act of Congress of March 3, 1871, and they allege that the line of such definite location was made and established from day to day as the same was actually surveyed and located on the ground by the engineers and agents of the said company, and said line was definitely fixed and located within the meaning of said act of Congress of March 3, 1857, and of said subsequent acts relating to said Saint Paul and Pacific Railroad Company as the same was so from day to day actually surveyed and located by said engineers and agents at work in the field, the precise time of which definite location will more fully appear from the map or plat thereof on file in the office of the Governor of the State of Minnesota and to which these defendants will for greater certainty refer.

And these defendants further severally say they admit that the said line referred to in said resolution is the only line of definite location ever fixed by said railroad company, except the aforesaid line by way of Otter Tail and Rush Lakes, but they deny that the line so definitely fixed and referred to in said resolution of December 13, 1871, is not on any line authorized by Congress, and deny that it is not the line on which said railroad is actually located on the ground and partially constructed, and they deny that said railroad as actually located on the ground and partially constructed is not on any line authorized by Congress or on the line determined and required by the Legislature of the State of Minnesota or
202 on the line indicated by the said map or by any map filed with the Governor of said State or with the Secretary of the Interior by or on behalf of said last-named company, whether as alleged in said bill of complaint or otherwise, and they allege that said railroad is so located and constructed (so far as the same has been constructed) upon a line authorized both by Congress and by the State and upon the line indicated by the maps so filed with the Governor and with the Secretary of the Interior.

And these defendants further severally say they admit that on or about said 13th day of December, 1871, the said St. Paul & Pacific Railroad Company adopted a resolution releasing to the United States the lands along said abandoned lines, and that said release was, on the 18th day of December, 1871, filed with the Secretary of the Interior, and that on the 20th day of December, 1871, a map of definite location of said St. Vincent Extension was filed in the office of the Commissioner of the General Land Office; but they deny that the lands along said line were not withdrawn from sale, &c., until the 6th day of February, 1872, and allege that the same were so withdrawn at the time of such definite location—long prior to said February 6, 1872—at which time they admit such withdrawal was made by and in pursuance of the order of the Commissioner of the General Land Office, as alleged in said bill of complaint.

And these defendants further severally say they admit the construction by the First Division of the St. Paul & Pacific Railroad Company, under a contract with said Saint Paul & Pacific Railroad Company, of certain portions of the lines of said railroad, to wit: 1, from Saint Cloud to Melrose, a distance of 35 miles; 2,

from a point on section 35, in township 138, range 46,
203 about 12 miles south of the Northern Pacific railroad, to a point 92 miles north of said Northern Pacific railroad, and they allege that the railroads so constructed are part of the aforesaid lines so definitely located and fixed; and they deny that the line so constructed was selected or adopted by the said First Division of the Saint Paul & Pacific Railroad Company, and allege that the same was selected and adopted by the said Saint Paul & Pacific Railroad Company, acting by its agent, the said First Division Company, as hereinafter stated; and they deny that said line was not the line authorized by Congress or by the State of Minnesota, and allege that the said line was authorized by both Congress and said State of Minnesota; and they deny that said First Division Company has operated said portion of constructed railroad from Saint Cloud to Melrose, except under a lease or arrangement between this defendant, J. P. Farley, as receiver of said Saint Paul & Pacific Railroad, and said First Division Company; and they deny that no other part of said railroad has ever been operated, except to a very limited extent, and that chiefly in connection with the work of construction, and deny that no equipment has ever been furnished therefor; and they deny that all work of construction on said railroad was entirely suspended and abandoned in the year 1872 and has never been resumed; and they allege that the whole and every part of the said railroad so constructed, to wit, said portion from Saint Cloud to Melrose and said portion from a point 12 miles south of the Northern Pacific Railroad to a point about 90 miles north thereof, have been not only fully constructed and completed but fully and completely equipped and duly accepted by the Governor of the State, and the same and every part thereof is now being operated by the
204 said J. P. Farley, receiver, except that portion between St. Cloud and Melrose, and that portion is being operated by the said First Division Company under a lease from the said J. P. Farley, as such receiver; and they admit from said Melrose to said point, about 12 miles south of said Northern Pacific railroad, the said St. Vincent Extension is entirely unconstructed, except that a part of that distance, namely, from Melrose to Alexandria, about 35 miles, was graded in the year 1872, leaving some 200 miles of said lines of railroad unconstructed, except that ties have been got out and are on the ground for the entire line; and they admit that it is only by the construction of said portions of said line (not partially constructed, as alleged in said bill of complaint) that the defendants claim the lands described in the schedules to said bill of complaint annexed.

And these defendants further severally say on or about the first day of April, 1871, after the enactment by Congress of the aforesaid act entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March 3, 1871, an arrangement was made and entered into between the said Saint Paul and Pacific Railroad Company and the said First Division of the Saint Paul and Pacific Railroad Company for the construction of the branch lines of railroad

contemplated and authorized by the aforesaid act of Congress, in substance as follows, viz.:

The said First Division Company was to take a lease of said branch lines of road of the said Saint Paul and Pacific Company for a period of ninety-nine years, and was to fully construct and complete the same within the life of the aforesaid land grant to the State of Minnesota in aid of said lines of railroad, to wit, on or before the 3d day of March, 1873, and in order to provide means for
205 such construction the said First Division Company was to issue and negotiate its bonds to the amount of fifteen millions of dollars, to be secured by a mortgage to be executed by the said Saint Paul and Pacific Railroad Company upon all and singular the said railroads so to be constructed, with their respective equipments, appurtenances, and franchises, and also of and upon all right, title, and interest then held or thereafter to be acquired by the said Saint Paul and Pacific Railroad Company in and to the lands granted or to be granted by Congress to aid in the construction of said railroads or either of them, meaning the aforesaid acts of March 3, 1857, March 3, 1865, and March 3, 1871, respectively, and such further enactments as Congress might thereafter make in reference to said lines of railroad; that thereupon, pursuant to said arrangement, the said First Division of the Saint Paul and Pacific Railroad Company made and negotiated in Holland and received the proceeds of $10,700,000 of its said bonds, and made, but was unable to negotiate, the remaining $4,300,000 of its said bonds pertaining to said issue; and to secure the same and in further pursuance of said arrangement the said Saint Paul and Pacific Railroad Company executed and delivered to the said George L. Becker, William G. Moorhead, and Horace Thompson, as trustees, a certain mortgage or deed of trust, bearing date the said April 1st, 1871, reciting the aforesaid arrangement, and that the said bonds were to be so issued for the purpose of raising money to construct the lines of railroad therein mortgaged, and in which mortgage the said Saint Paul and Pacific Railroad Company did covenant and agree that it or the said First Division of the Saint Paul and Pacific Railroad Company should and would diligently and faithfully use and apply the net proceeds of the negotiation of the said bonds, or such of them as should be negotiated, to the construction and
206 equipment of said railroads, and in and by which said mortgage the said Saint Paul and Pacific Railroad Company did grant, bargain, sell, convey, and transfer unto the said trustees, their successors and assigns, all and singular that certain branch line of railroad of the said St. Paul and Pacific Railroad Company or which the said St. Paul and Pacific Railroad Company was by law authorized to construct, and which was to be constructed and to run from some point at or near the town of Saint Cloud, in the county of Stearns, to the town of St. Vincent, in the county of Pembina and State of Minnesota, being a distance of two hundred and ninety-three (293) miles, more or less, and also all and singular that certain other line of railroad of the said Saint Paul and Pacific Railroad Company or which the said Saint Paul and Pacific Rail-

road Company was authorized by law to construct, and which was to be constructed and to run from Watab, in the county of Benton, by way of Crow Wing, to Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad, being a distance of fifty-five (55) miles, more or less, as contemplated by the said act of Congress approved March third, 1871, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges, and franchises thereunto respectively belonging or in anywise appertaining, or which should or might at any time thereunto belong or in anywise appertain.

And also all right, title, and interest which the said Saint Paul and Pacific Railroad Company then had, and all right, title, and interest which the said Saint Paul and Pacific Railroad Company, its successors or assigns, should or might at any time thereafter acquire by reason of the construction of said railroads or of either or of any part of either thereof, or otherwise in, to, or concerning the lands situate, lying, and
207 being in the State of Minnesota, which was embraced or intended to be embraced in the grants aforesaid or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of Congress hereinbefore mentioned or either of them, and which had been granted by said State to the said Saint Paul and Pacific Railroad Company, or should or might be granted or conveyed to the said Saint Paul and Pacific Railroad Company, its successors or assigns, to aid in the construction of the said lines of railroad or of either or of any part of either thereof, including in the premises thereby conveyed, and it being therein declared to be the true intent of said presents to convey, the road beds of the said railroads respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings, and materials whatsoever placed and to be placed on the said railroads respectively or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railroads, or either or any part of either thereof, or any of the equipments or appurtenances of the said railroads or of either or any part of either thereof, and all property, rights, and privileges whatsoever appertaining to the said railroads or to either or any part of either thereof then held by the said Saint Paul and Pacific Railroad Company or thereafter to be acquired by the said Saint Paul and Pacific Railroad Company, its successors or assigns, together with all and singular the tenements, here-
208 ditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said Saint Paul and Pacific Railroad Company in, to, and con-

cerning the same and each and every part and parcel thereof, with the appurtenances:

To have and to hold the said railroads, lands, and premises unto the said trustees as joint tenants and not as tenants in common, and unto the survivors and survivor of the said trustees and the heirs and assigns of such survivor forever, and which said mortgage or deed of trust is the same identical mortgage referred to in said bill of complaint; that thereupon the said First Division of the Saint Paul and Pacific Railroad Company took a lease of said lines of railroad pursuant to the aforesaid arrangement, and on or about the 4th day of May, 1871, proceeded with the work of making a survey and definite location of the said lines of railroad, and caused the line thereof from Saint Cloud to Saint Vincent, called the Saint Vincent Extension, to be so surveyed and definitely located from day to day from that time until the whole line was so located, on or before the 7th day of September, 1871, and the same and every part thereof was so definitely fixed and located before any part of the complainant's said railroad was definitely fixed or located and long before any map or plat of the definite location of any part of the complainant's said railroad was made or filed in the office of the Commissioner of the General Land Office; and afterwards and on the 13th day of December, 1871, the said Saint Paul and Pacific Company passed the resolution accepting the line of definite location of the said lines of railroad, as in said bill of complaint alleged, and after-
209 wards, on the 20th day of December, 1871, caused the map or plat of such definite location to be filed in the office of the Commissioner of the General Land Office, as alleged in said bill of complaint; that on the said 13th day of December, 1871, the said Saint Paul and Pacific Railroad Company duly executed to the United States a release of the lands along said abandoned lines as in the said act of Congress of March 3, 1871, it was provided, which release was, on the 19th day of December, duly filed in the office of the Secretary of the Interior, as in said bill of complaint alleged.

And these defendants further severally say the said First Division of the Saint Paul & Pacific Railroad Company, pursuant to the foregoing arrangements with the Saint Paul & Pacific Railroad Company during the year 1872, caused the following portions of said line of railroad so definitely fixed and located to be graded and ironed, to wit, from Saint Cloud to Melrose aforesaid, a distance of thirty-five miles, and from a point about twelve miles south of Glyndon, or the point where said line crosses the track of the complainant's said railroad, to a point ninety-two miles north of said Glyndon, a distance of one hundred and four miles—in all, a distance of one hundred and thirty-nine miles; and thereupon, in the fall of the year 1872 and before the said ironed portions of the said railroad had been fully completed so as to be entitled to the lands so granted in aid of the said lines of railroad, and after the said First Division Company had so actually issued and negotiated $10,700,000 of said bonds, for which there was no security whatever other than said mortgage on said uncompleted lines of railroad, the said First Division Company having wrongfully diverted the proceeds of said

bonds and used the same for other purposes than the construc-
210 tion of said lines, abandoned said construction and all work upon said lines of railroad, and said work has never been resumed upon said lines or any part thereof except by this defendant, J. P. Farley, as receiver of said lines of railroad, by appointment of this court, as hereinafter stated, and who afterwards completed and equipped the said ironed portions of the said railroad, as hereinafter stated.

And these defendants further severally say on or about the 10th day of July, 1873, one John S. Kennedy, Henry M. Baker, and John S. Barnes, being the holders of certain bonds so negotiated and issued under the said fifteen million mortgage, suing on behalf of themselves and all others holders of said class of bonds who might come in and seek relief in said suit, filed their bill in equity in this court against the said complainant herein, the Northern Pacific Railroad Company, the said Saint Paul & Pacific Railroad Company, the said First Division of the Saint Paul & Pacific Railroad Company, the said George L. Becker, William G. Moorhead, and Horace Thompson, then trustees under the said mortgage, and others, as defendants, setting forth, among other things, the aforesaid mortgage under which their said bonds were secured as aforesaid as the sole and only security for said issue of bonds; the utter and entire abandonment of the work of construction on the said lines of railroad by both the said First Division of the Saint Paul & Pacific Railroad Company and the Saint Paul & Pacific Railroad Company; the ownership by the said Northern Pacific Railroad Company of the entire capital stock of both the said First Division Company and the said St Paul & Pacific Company, and the conflict in the limits of the aforesaid land grants to the said Northern Pacific and Saint Paul & Pacific Railroad Companies respectively; the utter inadequacy of the security for the said issue of bonds,
and the danger that the land grant so appertaining to the
211 said branch lines of railroad would lapse before any of the lands so granted could be secured thereunder; the wrongful diversion by the said First Division Company, with the connivance and consent of the said Becker and Moorhead, two of the trustees under the said fifteen million mortgage, of a large portion of the proceeds of the said bonds so issued and negotiated, to wit, about $3,000,000, and the wrongful appropriation of the same by the said First Division Company to the completion of its own lines of railroad and the payment of interest and other indebtedness incurred in the construction of its own lines of railroad, and praying, among other things, for the appointment of a receiver to take possession of the said lines of the said Saint Paul & Pacific railroad, with power to borrow money and complete said lines of railroad or so much thereof as could be completed within the life of said land grant; and afterwards such proceedings were had in the said suit that on the first day of August, 1873, this defendant, J. P. Farley, was duly appointed by this court receiver of all and singular the said branch lines of railroad of the Saint Paul & Pacific Railroad Company, with power to borrow money and complete and equip said lines of rail-

road or such parts thereof as he should be able to complete and equip within the life of said land grant, and he thereupon duly qualified and took possession of the said lines of railroad and is still in the possession thereof as such receiver.

And these defendants further severally say after he was so appointed receiver this defendant, J. P. Farley, as such receiver, during the fall of the year 1873, borrowed money upon his debentures, as authorized by the order of court under which he was appointed as aforesaid, and proceeded with the work of con-
212 struction on the said uncompleted lines of railroad, and prior to the 1st day of January, 1874, fully completed and equipped, in accordance with the requirement of the said several acts of Congress granting lands in aid of the said branch lines of railroad and with the several acts of the Legislature of the State of Minnesota relating to said lines hereinbefore referred to or set out in the complainant's bill of complaint herein, all and singular so much of the said lines as had been graded and ironed by the said First Division Company, as hereinbefore alleged, to wit, that portion thereof extending from Saint Cloud to Melrose, a distance of thirty-five miles, and that portion thereof extending from a point about twelve miles south of Glyndon to a point ninety-two miles north thereof, a distance of one hundred and four miles; that said portions of said railroad so completed are constructed and equipped in all respects as a first-class railroad, and this defendant, J. P. Farley, as such receiver, has ever since then operated and maintained the same on said line of definite location as the same is indicated and laid down on said map or plat so filed on the 20th day of December, 1871, in the office of the Secretary of the Interior, and a duplicate whereof had been previously filed with the Governor of the State of Minnesota, and the said portions of the said lines of railroad so constructed and equipped have been duly accepted and approved by the Governor of the State of Minnesota and by the Secretary of the Interior, in accordance with the acts of Congress and of the Legislature of the State of Minnesota in such case made and provided.

And these defendants further severally say that both the said Saint Paul and Pacific Railroad Company and the said First Division of the Saint Paul and Pacific Railroad Company are hopelessly insolvent and the holders of the aforesaid bonds so issued and
213 negotiated under the said mortgage for fifteen millions of dollars have no security whatever therefor except the said mortgage; that the said mortgage premises, including all the lands set forth in the schedules to the complainant's said bill of complaint and which are in controversy in this action, are grossly inadequate to secure the said bonds and are, in fact, worth less than fifteen per cent. of the amount of said mortgage indebtedness; that since the commencement of this action the said Geo. L. Becker, William G. Moorhead, and Horace Thompson, trustees under the said mortgage, have all been removed from the trusts thereunder by the holders of the said bonds at a meeting called by them for that purpose, and these defendants, Jacob S. Wetmore, Thomas Denny, and Thomas N. Pearsall, have been duly elected by said bondholders as trustees

thereunder in their place and stead, the said bondholders in the matter of such removal and election acting under and pursuant to the power and authority in them vested under and by virtue of the provisions of the said mortgage; that default has been made in the payment of the interest on the bonds issued under the said mortgage and proceedings have been taken and are now pending in this court for a foreclosure of the said mortgage.

And these defendants further severally say they deny that on the fixing of the general route of the said Northern Pacific railroad, as alleged in said bill of complaint, under the provisions of the 6th section of complainant's said charter all or any of the lands for forty miles in width on both sides of said railroad were, by operation of law or otherwise, withdrawn or reserved until the full amount or quantity of lands granted by Congress to complainant in the State of Minnesota should be secured to the complainant for the purposes specified in said act; and they insist that said fixing of the
214 general route thereof in no way or manner affected the rights of the said Saint Paul and Pacific Railroad Company to said lands acquired long prior thereto under and by virtue of the aforesaid congressional grant in aid of the lines of railroad belonging to said last-named company.

And they admit that in the early part of the year 1873 and long prior thereto the said Saint Paul and Pacific Railroad Company asserted a prior claim to all the lands so granted in aid of its said lines of railroad, and they admit that said claim was in part based upon the claim that its right to said lands took effect from and under and related back to said act of Congress approved March 3, 1857. They also admit that the question as to which of said corporations, the complainant or said Saint Paul and Pacific Railroad Company, was entitled to the lands within the conflicting limits of their respective alleged grants was brought before and submitted to the Department at Washington in manner and form and with the results stated in said bill of complaint; but they deny that the said decision of the Secretary of the Interior was arrived at or made through mistakes in the law of the case or through any ignorance, mistake, or misapprehension of the facts; and they deny that the said Commissioner of the General Land Office, under date of July 9, 1873, or at any other time, in any official or other communication to the register and receiver of the United States land office at Oak Lake, or elsewhere, made the statement set forth in said bill of complaint or any statement of like tenor or effect, or that the said Secretary of the Interior ever made any such statement as that alleged in said bill of complaint under date of April 3, 1874.

And they also admit that pursuant to said decision of the Secretary of the Interior there has been issued to the State of Minnesota a patent bearing date the 14th day of January, 1875, purport-
215 ing to convey and in fact conveying to said State, for the use and benefit of the said Saint Paul and Pacific Railroad Company, its successors and assigns, in fee simple, a large amount and quantity of lands, and that some of said lands so conveyed are contained within the forty-mile limits of the complainant's said

grant and also within the twenty-mile limits of the aforesaid grants so made in aid of the lines of the said Saint Paul and Pacific Railroad Company, except such parts or parcels thereof as had been previously wrongfully conveyed to said complainant, the lands being particularly mentioned and described in the schedule annexed to the said bill of complaint; but they deny that any of said lands have been granted to or inure to the benefit of the said complainant, either under the said act of Congress of July 2, 1864, or under said joint resolution approved May 31, 1870, or otherwise; and they deny that all or any of said lands so mentioned or specified in said schedule are now or ever were in the possession or under the control of the complainant, or that the same are worth over one million of dollars; but they allege that the same are of great value—to wit, of the value of $250,000.

These defendants further severally say they admit they claim the said lands in part through and under said act of Congress of March 3, 1871 (not July 3, 1871, as in said bill alleged), but they allege that the same is not the only act of Congress under which they so claim said lands; and they deny that said act of March 3, 1871, does not apply to the line of railroad actually located and partly constructed as aforesaid or to any line ever adopted or fixed by the said Saint Paul and Pacific Railroad Company, or that the same was enacted after the grant of said lands to the complainant or after the fixing of the general route of complainant's said railroad or the withdrawal of lands for the same, as in said bill of com-
216 plaint alleged; and they allege that the said act does apply to the line of railroad so actually located and in part constructed by the said First Division Company as aforesaid and to the line actually located and adopted as aforesaid by the said Saint Paul and Pacific Railroad Company, and to no other line whatever; that the said line of railroad as so actually located and partly constructed does run to a point of intersection with a line of the said original grant near said Otter Tail and Rush Lakes, within the true meaning and intendment of the said act of Congress, and that the same has been duly approved by the Government of the United States and by the State of Minnesota, as in accordance with the provisions of the said act.

And these defendants further severally say they admit that the said Saint Paul & Pacific Railroad Company, acting through its representative, this defendant, J. P. Farley, as such receiver, caused the issuing of said patent to the State of Minnesota for the sole, exclusive benefit of holders of the bonds under said fifteen-million mortgage; but they deny that the same was wrongfully or fraudulently procured, and they deny that the said lands or any part thereof, either in law or equity, belong to the complainant; and they admit that the said Saint Paul & Pacific Railroad Company and those claiming under it as aforesaid refuse to convey said lands and claim the same adverse to the complainant; and they admit that the said J. P. Farley, as such receiver, is endeavoring to obtain and procure from the Governor of the State a conveyance to the said Saint Paul & Pacific Company of the said lands patented to the State as afore-

said, and they insist that he is entitled to such conveyance for the use and benefit of the said bondholders.

And these defendants further severally say the said Min-
217 neapolis & Saint Cloud Railroad Company never became constituted or organized as a corporation or otherwise and never made any survey or location of any line of railroad, either general or definite, between a point at or above Saint Cloud and Lake Superior, or to which the grant of lands under the said joint resolution of Congress of July 12, 1862, was applicable, and never took any step whatever or did any act or thing towards the location or construction of any such line of railroad or the securing of the lands intended to be granted by the said joint resolution either before the said congressional act of March 3, 1865, or afterwards.

And these defendants further severally say that all and singular the lands designated in the said schedules to the said bill of complaint in equity belong to the said Saint Paul & Pacific Railroad Company by reason of the construction and equipment as aforesaid of the aforesaid one hundred and thirty-nine miles of the said lines of railroad, and application has been made in due form by the said company, through and by its representative, the said J. P. Farley, receiver as aforesaid, to the Governor of the State of Minnesota for deeds of conveyance of the same and every part thereof by reason and in virtue of said construction and equipment and in accordance with the said various acts of Congress and legislative enactments.

And these defendants further severally say the line of definite location of the complainant's said railroad, as the same is now constructed, is not on the line of the general route alleged to have been made in the months of August and September, 1870, but the general route so fixed and made by said complainant, as in its said bill of complaint alleged, was on a different line entirely from said line of definite location, and no part of the lands set apart for or
218 claimed by the complainant under the said general route are within the forty-mile limits of said railroad as the same is so definitely fixed and constructed.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

GEO. L. & C. E. OTIS AND
GILMAN, CLOUGH & LANE,
Solicitors & Counsel for Defendants, Jacob S. Wetmore and Others, Trustees.

I. V. HEARD,
Solicitor & Counsel for J. P. Farley, Receiver.

219 And afterwards, to wit, on the 4th day of October, A. D. 1875, the replication of the Northern Pacific R. R. Co. to the joint and several answer of Jacob S. Wetmore *et al.* was filed in the words and figures following:

Replication.

220 In the Circuit Court of the United States for the District of Minnesota. In Equity.

The replication of The Northern Pacific Railroad Company, plaintiff, to the joint and several answer of Jacob S. Wetmore, Thomas Denny, Thomas N. Pearsall, and Jesse P. Farley, four of the defendants.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication therein saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

GEO. GRAY,
Solicitor and of Counsel for Plaintiff.

Endorsed: Filed Oct. 4, 1875. H. E. Mann, cl'k.

221 And afterwards, to wit, on the 24th day of December, A. D. 1875, the following summons, with proof of service, on the St. Paul & Pacific Railroad Co. was filed in the words and figures following, to wit:

Summons & Proof of Service on St. P. & P. R. R. Co.

222 STATE OF MINNESOTA, }
County of Clay. }

District Court, Eleventh Judicial District.

THE NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff,
against
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY and HORACE Thompson, George L. Becker, and William G. Moorhead, Trustees, and Hon. Geo. P. Wilson, the Attorney General of the State of Minnesota, Defendants.

Summons.

The State of Minnesota to the above-named defendants:

You and each of you are hereby summoned and required to an-

swer the complaint in this action, which has been filed in the office of the clerk of said court, in the town of Moorhead, in said county, and to serve a copy of your answer to the said complaint on the subscriber, at his office, in the city of St. Paul, county of Ramsey, State of Minnesota, at No. 71 Jackson street, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will apply to the said court for the relief demanded therein.

Dated March 15th, A. D. 1875.

GEO. GRAY,
Plaintiff's Attorney, St. Paul, Minn.

Endorsed: Filed Dec. 24, 1875. H. E. Mann, clerk.

I hereby admit due, legal, and personal service of the within summons, through me, on the within-named defendant, The Saint Paul and Pacific Railroad Company, this 24th day of March, A. D. 1875.

I. N. HUTCHINSON,
Pres't Saint Paul and Pacific Railroad Company.

223 And on the same day, to wit, the 24th day of December, 1875, the following summons, with proof of service, on George P. Wilson, attorney general of the State of Minnesota, was filed in the words and figures following, viz:

Summons, with Proof of Service, on George P. Wilson, Att'y Gen'l of the State of Minnesota.

224 STATE OF MINNESOTA, }
County of Clay. }

District Court, Eleventh Judicial District.

THE NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff,
against
THE SAINT PAUL AND PACIFIC RAILRAOD COMPANY and HORACE Thompson, George L. Becker, and William G. Moorhead, Trustees, and Hon. Geo. P. Wilson, the Attorney General of the State of Minnesota, Defendants.

Summons.

The State of Minnesota to the above-named defendants:

You and each of you are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of said court, in the town of Moorhead, in said county, and to serve a copy of your answer to the said complaint on the subscriber, at his office, in the city of St. Paul, county of Ramsey, State of Minnesota, at No. 76 Jackson street, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within

the time aforesaid the plaintiff in this action will apply to the said court for the relief demanded therein.

Dated March 15th, A. D. 1875.

GEO. GRAY,
Plaintiff's Attorney, St. Paul, Minn.

Endorsed: Filed Dec. 24, 1875. H. E. Mann, clerk.

I hereby admit due, legal, and personal service of the within summons on me this sixth day of April, 1875, at the city of St. Paul, Ramsey county, Minnesota.

GEORGE P. WILSON,
Attorney General, State of Minn.

225 And on the same day, to wit, the 24th day of December, A. D. 1875, the following affidavit of Geo. Gray, complainant's solicitor, as to the non-appearance of defendants, The St. P. & P. R'y Co. and Geo. P. Wilson, att'y gen'l of the State of Minnesota, in the words and figures following:

Affidavit of Geo. Gray, Esq., as to Non-Appearance of Defendants.

226 *Affidavit of Want of Appearance, etc.*

In the Cicuit Court of the United States for the District of Minnesota. In Equity.

NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY and Others, Defendants.

DISTRICT OF MINNESOTA, *ss:*

George Gray, being duly sworn, deposes and says that he is the solicitor of the said defendant in the above-entitled cause; that this cause was commenced in a court of the State of Minnesota, namely, in the district court for the county of Clay, in the eleventh district of said State, and was removed to this court under and in pursuance of the act of Congress in such case made and provided; that
227 the original complaint in this action was filed in the office of the clerk of said district court and summons was issued on the fifteenth day of March, one thousand eight hundred and seventy-five; that said summons was served on the said defendant, The St. Paul and Pacific Railroad Company, on the 24th day of March, 1875, as appears by the admission of said service thereon endorsed, signed by John N. Hutchinson, the president of the said Saint Paul and Pacific Railroad Company, and now on file in this court in the above-entitled cause.

And defendant further says that on the 6th day of April, 1875, the said summons was duly and personally served on the defendant, the Hon. George P. Wilson, attorney general of the State of Minnesota, and the admission of said service is endorsed on said summons and signed by the said George P. Wilson, attorney general of

the State of Minnesota, and now on file in this court in this cause.

228 And defendant says that the said defendant, The St. Paul and Pacific Railroad Company, and the said defendant, George P. Wilson, attorney general of the State of Minnesota, have not nor has either of them appeared in said cause or filed or served any notice of appearance therein or answered the bill of complaint in this cause.

GEO. GRAY.

Subscribed and sworn to before me this 24th day of December, 1875.

H. E. MANN, *Clerk.*

Endorsed: Filed Dec. 24, 1875. H. E. Mann, clerk.

229 And on the same day, to wit, the 24th day of December, A. D. 1875, an order for a decree *pro confesso* was filed in the words and figures following, to wit:

Order for Decree pro Confesso.

230 Order pro confesso.

In the Circuit Court of the United States for the District of Minnesota.

In Equity.

NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY *et al.*, Defendants.

'On filing due proof of personal service of the summons issued in this cause on the said defendant, The St. Paul and Pacific Railroad Company, and on the defendant, George P. Wilson, attorney general of the State of Minnesota, and more than twenty days having elapsed since the service of said summons on said defendants and each of them, and neither of said defendants having appeared, on motion of George Gray, Esq., solicitor for complainant, it is ordered that the bill of complaint which is filed in this cause be, and the same is hereby, taken as confessed by the said de-
231 fendants, The St. Paul and Pacific Railroad Company and George P. Wilson, attorney general of the State of Minnesota.

Endorsed: Filed Dec. 24, 1875. H. E. Mann, clerk.

232 Which said order for decree *pro confesso* was entered upon said 24th day of December, 1875, in the Common Rule Register, page 262, in the words and figures following, viz:

Order for Decree pro Confesso.

233 Order entered.

Common Rule Register, page 262.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL AND PACIFIC R. R. CO. *et al.*

DECEMBER 24, 1875.

On filing due proof of personal service of the summons issued in this cause on the said defendant, The St. Paul & Pacific R. R. Co., and on the defendant, George P. Wilson, attorney general of the State of Minnesota, and more than twenty days having elapsed since the service of said summons on said defendant, and each of them, and neither of said defendants having appeared, on motion of George Gray, solicitor for complainant, it is ordered that the bill of complaint which is filed in this cause be, and the same is hereby, taken as confessed by the said defendants, The St. Paul & Pacific R. R. Co. and George P. Wilson, attorney general of the State of Minnesota.

234 And afterwards, to wit, on the 29th day of April, A. D. 1876, the following stipulation extending time to take testimony and admitting change of trustees, etc., was filed in the words and figures following, viz:

Stipulation Extending Time to Take Testimony, etc.

235 In the Circuit Court of the United States for the District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*, Defendants.

Stipulation extending time to take testimony and admitting change of trustees, etc.

In this cause it is hereby stipulated and agreed by and between the said complainant and the said defendants, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, and J. P. Farley, receiver, who have appeared and answered the said complainant's bill of complaint herein, that the time for taking the testimony in this cause be, and the same is hereby, extended to the first day of December, one thousand eight hundred and seventy-six; that the complainant shall proceed and take its proofs-in-chief by and before the first of October next; that the said defendants above named shall take their proofs by and before the first day of November next, and the complainants shall take rebutting *truths*, if any it may have, by and before the first day of December next. The proof of the substitution of trusteees as alleged in the answer of said defendants is hereby waived; and it is hereby admitted that said defendants, Jacob S. Wetmore, Thomas Denny, and Thomas N. Pearsall, have

been lawfully substituted as trustees in the room and place of Horace Thompson, George L. Becker, and William G. Moorhead, as averred in the answer of said defendant.

All the acts of Congress and all public acts of the Legislature of the State of Minnesota which either party may desire to produce upon the hearing may be introduced and made evidence in
236 the hearing of this cause by either party without objection as to relevancy and immateriality.

GEORGE GRAY,
Solicitor for Complainant.
GEO. L. OTIS,
With Gilman, Clough & Lane, Solicitors for Defendants.

April 29, 1876.

Endorsed: Filed Sept. 6th, 1876. H. E. Mann, clerk.

237 And afterwards, to wit, on the 6th day of November, 1877, an order admitting Jesse P. Farley, receiver, as a party defendant, with admission of service endorsed thereon, was filed in the words and figures following:

Order Admitting J. P. Farley as a Party Defendant, with Admission of Service.

238 Order admitting Jesse P. Farley, receiver, as party defendant.

STATE OF MINNESOTA:

District Court for 11th Judicial District, Clay County.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY, GEORGE L. Becker, William G. Moorhead, and Horace Thompson, Trustees, and the Hon. Geo. P. Wilson, Attorney General of the State of Minnesota, Defendants.

On reading the petition of Jesse P. Farley, receiver, and the stipulation of counsel thereto annexed and on motion of I. V. D. Heard, Esq., attorney for said receiver, it is hereby ordered that the said Jesse P. Farley, as such receiver, be, and he is hereby, admitted a party defendant in the above-entitled action, with leave to defend the same in all respects the same as though said receiver had been made a party defendant to said action originally, with leave to answer or demur to said complaint at any time until the 20th day of April instant, as in said stipulation provided.

By the Court:

O. P. STEARNS, *Judge.*

Dated at Duluth, Minn., April 15th, 1875.

Endorsed: Copy of the within order served on me the 14th day of April, 1875. Geo. Gray, attorney for plaintiff. Filed Nov. 6th, 1877. H. E. Mann, clerk.

239 And afterwards, to wit, on the 13th day of March, A. D. 1878, the following notice of appearance was filed and entered of record in this cause in the words and figures following:

Notice of Appearance of Defendants Thompson, Becker, and Moorhead.

240 Notice of appearance.

STATE OF MINNESOTA, } ss:
County of Clay, }

District Court, 11th District.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, HORACE THOMPSON, GEO. L. BECKER, and WM. G. MOORHEAD, Trustees, *et als.*

SIR: Please to take notice that we have been retained and appear as attorney for the defendants, Horace Thompson, George L. Becker, and Wm. G. Moorhead, trustees, etc., in the above-entitled action, and demand a copy of the complaint therein, which, with all other and further papers in the case, may be served upon Geo. L. and C. E. Otis at their office, St. Paul.

Dated March 31st, 1875.

Yours respectfully,

GEO. L. AND CHAS. E. OTIS,
GILMAN, CLOUGH & LANE,
Attorneys for Defendants Thompson, Becker, and Moorhead, Trustees.

To Geo. Gray, Esq., attorney for plaintiff.

Endorsed: Time to answer the complaint filed in the within action is hereby extended to the 20th day of April next. St. Paul, Minn., March 31st, 1875. Geo. Gray, attorney for plaintiff. Due service of the within notice is hereby admitted, at St. Paul, Minn., on this 31st day of March, A. D. 1875. Geo. Gray, att'y for pl'ff. Filed Mar. 13, 1878. H. E. Mann, clerk.

241 And on the same day, to wit, viz., the 13th day of March, A. D. 1877, the following withdrawal of appearance for defendant Becker was filed in the words and figures following, viz:

Withdrawal of Appearance for Def't Becker, etc.

242 Withdrawal of appearance.

STATE OF MINNESOTA:

District Court for 11th Judicial District, Clay County.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, HORACE Thompson, Geo. L. Becker, and Wm. G. Moorhead, Trustees, *et al.*

Col. Geo. Gray, Esq., plaintiff's attorney.

DEAR SIR: You will please take notice we hereby withdraw our appearance as to the defendant Geo. L. Becker, and from this time forth we appear for the defendants Horace Thompson and Wm. G. Moorhead, trustees, only.

St. Paul, Apr. 5th, 1875.

Yours truly,

GEO. L. AND CHAS. E. OTIS AND
GILMAN, CLOUGH & LANE,
Attorneys for Defendants Thompson and Moorhead, Trustees.

Endorsed: Due service hereof by copy admitted this 5th day of April, 1875. Geo. Gray, plaintiff's att'y. Filed Mar. 13, 1878. H. E. Mann, clerk.

243 And afterwards, to wit, on the 26th day of June, A. D. 1878, the following stipulation as to supplemental matter was filed in the words and figures following:

Stipulation as to Supplemental Matter.

244 In the Circuit Court of the United States for the District of Minnesota. In Equity.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY and JACOB S. WETmore, Thomas Denny, and Thomas W. Pearsall, Trustees; Hon. George P. Wilson, Attorney General of the State of Minnesota, and Jesse P. Farley, Receiver.

In this cause the bill of complaint having been taken as confessed by the defendants, The St. Paul and Pacific Railroad Company and Hon. George P. Wilson, attorney general of the State of Minnesota, and the lands mentioned and described in the bill and the
245 schedule thereto annexed having been since the commencement of this suit conveyed by the said State of Minnesota to the said defendant, The St. Paul and Pacific Railroad Company, by deed executed by the Government under the great seal of this State, and the legal title to said lands being now in said def't, The St. P. & P. R'y Co., it is hereby stipulated and agreed by and be-

tween the said plaintiff and the said defendants, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, and Jesse P. Farley, receiver, by their respective solicitors, that this cause shall proceed to hearing and decree in like manner and with the same effect as if said conveyance and alienation had been made before the commencement of this suit and had been set forth or alleged in the bill, or as if the same had been set forth and alleged in a supplemental bill filed herein and admitted in an answer thereto by the said defendants.

June 24th, 1878.

GEO. GRAY,
Solicitor for Plaintiff.
GEO. L. OTIS,
Solicitor for Def'ts, Trustees.
246 I. V. D. HEARD,
Solicitor for J. P. Farley, Receiver.

Endorsed: Filed June 26, 1878. H. E. Mann, clerk.

247 And afterwards, to wit, on the 26th day of June, A. D. 1878, the following order dismissing bill as to defendant, Geo. P. Wilson, attorney general, was filed in the words and figures following:

Order Dismissing Bill as to Geo. P. Wilson, Att'y Gen'l.

248 Order dismissing bill as to Hon. Geo. P. Wilson, att'y gen'l, etc.

In the Circuit Court of the United States for the District of Minnesota. In Equity.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, THOMAS DENNY, and THOMAS W. PEARSALL, Trustees; Hon. George P. Wilson, Attorney General of the State of Minnesota, and Jesse P. Farley, Receiver.

In this cause, on reading and filing the stipulation of the parties, whereby it appears that since the commencement of this suit the State of Minnesota has conveyed the lands in controversy, the subject-matter of this suit, to the defendant, The St. Paul and Pacific Railroad Company, and on motion of George Gray, solicitor for plaintiff, it is ordered that this cause shall proceed to hearing and decree in like manner and with the same effect as if said conveyance had been made before the commencement of this suit and had been set forth and alleged in the plaintiff's bill, or as if the same had been set forth and alleged in a supplemental bill filed herein and admitted in an answer thereto by the defendants.

And on like motion it is further ordered that this cause be dis-

missed as to the defendant, Hon. George P. Wilson, attorney general of the State of Minnesota, without costs as to either party.

Endorsed: Filed June 26, 1878. H. E. Mann, clerk.

249 And afterwards, to wit, on the 21st day of April, A. D. 1884, a petition of the St. Paul, Minneapolis and Manitoba Railway Co. to be joined as party defendant to this cause was filed in the words and figures following, viz:

Petition of St. P., M. & M. R'y Co. to be Joined as Party Defendant.

250 Circuit Court of the United States for the District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, Thomas Denny, and Thomas W. Pearsall, Trustees, and Jesse P. Farley, Receiver.

To the honorable the judges of the circuit court of the United States for the district of Minnesota:

The petition of the Saint Paul, Minneapolis and Manitoba
251 Railway Company respectfully shows that your petitioner is a corporation created and existing for railway purposes under and by virtue of the laws of the State of Minnesota and is a citizen of said State; that the bill of complaint herein was taken as confessed as against the defendant, The St. Paul and Pacific Railroad Company, and that the said defendants Wetmore, Denny, and Pearsall and Jesse P. Farley, as receiver, answered said bill August 10th, A. D. 1875, and to said answer a replication was filed on the 4th day of October, A. D. 1875; that proofs have been taken by and on behalf of said complainant and on behalf of said defendants, and the time for taking proofs herein has expired; that there-
252 after and on or about the 8th day of October, A. D. 1873, the defendant, Jesse P. Farley, settled his account as receiver, and was discharged from said trust by an order duly made in the suit in this court, in which he was appointed, mentioned in said answer herein, and that his functions and duties as such receiver have been terminated.

And your petitioner further shows that the said Wetmore, Denny, and Pearsall, as trustees by substitution in the place of Becker, Thompson, and Moorhead, original trustees, after the filing of said answer and on or about the 27th day of December, A. D. 1875, commenced a suit in said court, on the equity
253 side thereof, against the Saint Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, and others for the foreclosure of the trust deed or mortgage mentioned in the answer in this cause for fifteen million dollars upon the property in said answer described and set forth, which suit was for a long time rigorously defended; that under the legislation of the State of Minnesota the line of road known as

the St. Vincent Branch or Extension was required to be built within a short limited time on *fealty* of forfeiting the lands granted as stated in said answer for building it and the franchises of
254 the St. Paul and Pacific Railroad Company, and in order to save said grant and franchises this court, upon the consent of said trustees and the committee of the bondholders under said mortgages, authorized said Farley, as such receiver, to complete said road, which he did prior to November, 1878, to the satisfaction and approval of said State and of the United States, with money furnished by a so-called syndicate of bondholders, representing eleven million and four hundred thousand dollars of said bonds, upon debentures ordered to be issued by this court to the amount of eight hundred thousand dollars; that such proceedings were thereupon afterwards had in said court in said foreclosure suit that during the Dec. term of said court, to wit, on the 11th day of April, A. D.
255 1879, a final decree of foreclosure was duly made and rendered therein adjudging, among other things, that there was then due and unpaid on said fifteen-million-dollar trust deed or mortgage the said principal sum of fifteen million dollars, with interest thereon from the 1st day of July, A. D. 1874, and that there was then due upon debentures theretofore issued under the order of the court the sum of eight hundred and ninety thousand dollars in all; that said sum first named was a lien on the said mortgage property and franchises, as stated in said decree, and said sum last named was a lien paramount to all others upon said line of railroad from
256 Crookston to Saint Vincent and the international boundary at Emerson and the said line from Melrose to Alexandria and the appurtenances of said lines and the lands granted by Congress and the State of Minnesota to aid in the construction of said mortgaged railroad (described in said answer) and appertaining to said lines; that the lands so granted by Congress then held by or to which the said St. Paul and Pacific Railroad Company had any right, together with all and singular its property subject to the lien of said trust deed or mortgage, including the said lines of railroad and all its franchises, privileges, and immunities, including the franchise to be a corporation, should be sold as one property and
257 not separately or in parcels, and that in default of payment of the sum due on said trust deed or mortgage, with interest, within five days after the date of said decree that all and singular said mortgaged premises, property, rights, immunities, and franchises described in said bill of complaint and decree, including those described in and covered by said trust deed or mortgage, be sold at public auction by or under the direction of Horatio E. Mann, Esq., one of the masters of said court, at the eastern door of the United States custom-house building, where said court holds its sessions, in the city of Saint Paul, in said district, as one parcel and as an entire property, to the highest and best bidder therefor, unless previous to such sale the amount of said decree and costs of said suit
258 and expenses should be paid, provided that said property should not be sold for less than one million five hundred thousand dollars, and that the right and equity of redemption of

the defendants in that suit and each of them and of all persons claiming by, through, or under them or either of them should be absolutely barred and foreclosed, save only such right of redemption, if any, as might exist under the statutes of Minnesota, and that upon the payment of the purchase-money bid at such sale and the confirmation of said sale by the court the said master should execute and deliver a certificate or deed of conveyance of the premises to the purchaser or purchasers thereof.

259 And your petitioner further shows that the said master advertised all and singular said premises for sale under said decree, as therein provided and as required by law, on the 14th day of June, A. D. 1879, and pursuant to such previous notice thereof and at the place appointed and in conformity with the directions and provisions contained in said decree said master duly sold all and singular said premises to your petitioner, it being the highest and best bidder therefor, for the price and sum of one million six hundred thousand dollars duly paid therefor, and that said sale was by said master duly reported to said court, and that afterwards

260 and at the June term thereof, to wit, on the 21st day of June, A. D. 1879, said court duly confirmed said sale and report and all proceedings thereon in all respects, and ordered and directed that said master forthwith execute and deliver to your petitioner, the purchaser at said sale, a certain certificate or conveyance of said premises and property so sold by him as aforesaid under said decree and then submitted — to the court with his report, as in said decree it was provided, and the form of which was thereby approved by said court; that said master, in pursuance of said decree and order of confirmation, duly executed to your petitioner such certificate or conveyance, whereby the title to all and singular the

261 property described in and by said trust deed or mortgage and in said decree and so sold as aforesaid became and was and now is well vested, both at law and in equity, in your petitioner, and whereby it has succeeded to all the right, title, and interest of the said defendants in this suit in and to the premises in controversy therein, and to all their rights in and to the lands within the limits, both place and indemnity, at or near Glyndon, in Minnesota, where the road so purchased by your petitioner crosses the road of said complainant and which are also within the place and indemnity limits of the grant to said complainant, as claimed by it in this suit.

262 And your petitioner further shows unto your honors that on or about the 18th day of January, A. D. 1873, a patent was issued by the United States to the said complainant for twenty-nine thousand seven hundred and eighty-two and fifty-hundredths acres of lands within the limits of lands granted for the said road from Saint Cloud to Saint Vincent, being sections of land granted and withdrawn for the benefit of said road and to aid in the construction thereof under the acts of Congress and legislation of the State of Minnesota mentioned in the answer in this suit, which said lands are situated at and in the vicinity of said crossing at Glyn-

263 don aforesaid and within the place and indemnity limits of

said road; that thereafter and — or about the — day of ——, A. D. 187–, three thousand two hundred and seventy-six and twenty-nine hundredths acres were patented to said complainant of the lands granted and withdrawn for the benefit of said road and to aid in the construction thereof in like manner as aforesaid from the place and indemnity limits of said road, making in all thirty-three thousand and fifty-eight and seventy-nine hundredths acres, all of which the said complainant claimed and still claims that it was well entitled to have under its said grant and as a part thereof upon the grounds stated and set forth in its said bill of com-
264 plaint, but which your petitioner submits and insists *that* the said St. Paul and Pacific Railroad Company was well entitled to have and hold for the reasons set forth in the answer in this suit; and your petitioner, by reason of the completion of said road and its said purchase at said foreclosure sale, is now well entitled to have and hold — as part of the property so sold and conveyed to it; that, as your petitioner is informed and believes, said lands were so patented to said complainant contrary to law, in violation of the grant for the said branch road to Saint Vincent, and contrary to a previous decision of the Department of the Inte-
265 rior awarding to said St. Paul and Pacific Railroad Company as for its benefit all lands within its place and indemnity limits in odd-numbered sections at and in the vicinity of said crossing of said roads at Glyndon aforesaid within the limits of said complainant's said road, and that said lands were erroneously and inadvertently patented to said complainant when they should have been patented to the State of Minnesota for the use of the said Saint Paul and Pacific Railroad Company, and by said State should long since have been conveyed to it or to your petitioner as the rightful assignee of its interest therein; that said lands in part are referred to in the bill of complaint in this cause, wherein it is men-
266 tioned in substance that the Secretary of the Interior declined to direct proceedings to be instituted to cancel a patent for part of said lands on the ground "the right of the St. Paul and Pacific Railroad Company is not, in my (the Secretary's) opinion, so entirely clear as to ask the institution of such proceedings, and that the parties will accordingly be left to the remedies afforded by the courts," and are mentioned in said answer as lands "previously conveyed to the said complainant."

And your petitioner further shows unto your honors that it is desirous of having its rights so acquired as aforesaid in and to the said lands within the limits of its said grant where they are crossed
267 by the limits of said complainant's grant settled and adjudicated by this court, and to that end that its rights and interests in the premises may be properly presented to said court and represented before it; that it is advised that it is proper and necessary for the purpose that it be made a party defendant to this suit, and that it be allowed to answer said bill of complaint, and that it should have leave to file a cross-bill herein against said complainant in relation to said lands so improperly patented to the said complainant, and which it is advised that by a proper construction and

application of said grants now justly and equitably belong to your petitioner, and that a construction may be given to said grants
268 to the end that the entire controversy between the parties interested under the same may be settled in this suit without prejudice to the proceedings had and the proofs already taken in this suit, but with the right to both parties to take such further proofs as they shall be advised are material in respect to the controversy between them.

Wherefore your petitioner prays that an order may be made in this cause making it a party defendant thereto, with leave to answer said bill of complaint and to file such cross-bill against said complainant in respect to the said lands so patented to it by the
269 United States as aforesaid as your petitioner shall be advised is proper and necessary without prejudice to the proceedings and proofs already taken herein, but with leave to each party to take such further or other proofs as it shall be advised are material, and that the bill of complaint herein may be dismissed as to the defendant, Jesse P. Farley, as receiver, and that your petitioner may have such further or other order or relief in the premises as shall be agreeable to equity.

And your petitioner will ever pray.

R. B. GALUSHA,
Sol's for Petitioner.

270 UNITED STATES OF AMERICA, *District of Minnesota*, } *ss:*

James J. Hill, of the city of St. Paul, in said district, being duly sworn, on oath says that he is the president of the St. Paul, Minneapolis and Manitoba Railway Company, the petitioner named in the foregoing petition, and makes this verification thereof in its behalf; that he is familiar with all the matters and facts therein stated; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge in substance and matter of fact except as to the matters therein
271 stated on information and belief, and as to those matters he verily believes it to be true; and further saith not.

JAS. J. HILL.

Subscribed and sworn before me this 7th day of April, A. D. 1884.

[SEAL.] WM. A. SPENCER, *Clerk.*

272 Circuit Court of the United States for the District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainants,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, Thomas W. Pearsall, & Thomas Denny, Trustees, & Jesse P. Farley, Receiver, Defendants.

Upon reading and filing the verified petition of the St. Paul,

Minneapolis & Manitoba Railway Company, dated the 7th day of April, A. D. 1884, praying for an order herein making it a party defendant to this suit, with leave to answer the bill of com-
273 plaint therein and to file a cross-bill against said complainant with respect to certain matters alleged in said petition without prejudice to the proceedings and proofs already taken therein, but with the right to each party to take further or other proofs, and that the bill filed herein may be dismissed as to the defendant, Jesse P. Farley, receiver, etc., and in consideration of the matters stated in said petition hereto annexed, and upon the pleadings, proofs, and proceedings on and of record in this cause—

On motion of R. B. Galusha, solicitor for said petitioner, it is ordered that the said complainant and the said defendants
274 herein appear before this court, at the United States court-room, in the city of Saint Paul, in said district, on the 21st day of April inst., at ten o'clock a. m. of said day, and show cause, if any they have, why the prayer of said petitioner should not be granted and why the said petitioner should not have such further or such other order or relief in the premises as shall be just and proper.

Ordered further, that a copy of said petition and of this order be served on the solicitors of the complainant and the solicitors of the defendants at least 8 days before the time so fixed for the hearing of said petition.

Dated April 7th, A. D. 1884.

R. R. NELSON, *Judge.*

275 STATE OF MINNESOTA, }
County of Ramsey. }

Hanson C. Coxe, being duly sworn, says that on the 8th day of April, 1884, at the general office of the Northern Pacific Railroad Company, in the city of St. Paul, and at the request of R. B. Galusha, Esq., solicitor for the within-named petitioner, he personally served a copy of the within petition and order on W. P. Clough, Esq., the standing solicitor and counsel of said Northern Pacific R. R. Co., by delivering to and leaving with him said copy of said petition and order.

HANSON C. COXE.

276 Subscribed and sworn to this 18th day of April, A. D. 1884, before me—

WILLIAM H. LIGHTNER,
Notary Public, Minn.

Filed April 21st, 1884.

OSCAR B. HILLIS, *Clerk.*

Due service of the within petition and order is admitted.

C. E. OTIS,
Surviving Partner of C. L. & C. E. Otis,
Sol'r for Def'ts, Wetmore, Denny, & Pearsall.

I. V. D. HEARD,
Sol'r for Def't Farley, Receiver.

277 And on the same day, to wit, the 21st day of April, 1884, the following further proceedings were had and entered of record in this cause in the words and figures following, viz:

278 United States Circuit Court for the District of Minnesota.

Term Minutes, December Term, A. D. 1883.

MONDAY MORNING, *April 21st*, 1884.

Court opened pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY.

279 The petition and motion of the Saint Paul, Minneapolis & Manitoba Railway Company praying leave to be made and joined as a party defendant in this cause and with leave to file a cross-bill, and that the bill of complaint herein be dismissed as to the defendant, Jesse P. Farley, as receiver, coming on to be heard upon the order to show cause herein, dated the 7th day of April, A. D. 1884, filed in this cause, the said petitioner appeared by George B. Young, R. B. Golusha and Horace R. Bigelow, its solicitors; thereupon said petitions and motions are argued by said solicitors, and, the hearing not being concluded, it is by this court ordered that the further hearing of the same be, and the same is hereby,
280 postponed until Wednesday next at 11 o'clock a. m. or as soon thereafter as counsel can be heard.

281 And afterwards, to wit, on the 23rd day of April, A. D. 1884, the following further proceedings were had and entered of record in Term Minutes F, 336, in the words and figures following:

282 United States Circuit Court for the District of Minnesota.

Term Minutes, December Term, A. D. 1883.

WEDNESDAY MORNING, *April 23rd*, 1884.

Court opened pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY.

The petition and motion of the St. Paul, Minneapolis and Manitoba Railway Company praying leave to be made and joined a party defendant in this cause and with leave to file a cross-
283 bill, and that the bill of complaint herein be dismissed as to defendant, Jesse P. Farley, as receiver, coming on to be further heard, the same is further argued by W. P. Clough, Esq., solicitor for complainant, and Horace R. Bigelow and R. B. Galusha, solicitors for petitioner.

Thereupon the same is duly submitted and by the court taken under advisement.

Ordered, that this court do now adjourn until to-morrow morning at 10 o'clock.

A true record.

Attest: OSCAR B. HILLIS, *Clerk.*

284 And afterwards, to wit, on the 3rd day of May, 1884, an opinion was filed denying the petition and motion of the St. P., M. & M. R'y Co. to become a party defendant in the words and figures following, viz:

285 United States Circuit Court, District of Minnesota.

MAY 3RD, 1884.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY *et al.*

Petition by the St. Paul, Minneapolis & Manitoba Railway Company to take part in the proceedings, etc.

The St. Paul, Minneapolis and Manitoba Railway Company became a purchaser at a foreclosure sale, June 14th, 1879, of all
286 the interest of the defendant, The St. Paul & Pacific Railroad Company, in the property in controversy in this suit. The other defendants, Wetmore, Denny, and Pearsall, are trustees of the mortgage foreclosed; and the defendant Farley is a receiver of the defendant railroad company and its property, appointed August 1st, 1873, in a suit brought by bondholders against the said railroad company *et als.*

The St. Paul, Minneapolis and Manitoba Railway Company filed a petition praying to be made a party defendant to the above-entitled suit, with leave to answer the bill of complaint, and to file such cross-bill against said complainant as it, your petitioner,
287 shall be advised is proper and necessary, and that the original bill shall be dismissed as to the defendant Farley, the receiver, who had been relieved and discharged of his trust. The suit is ready for hearing on proofs when the petition is filed, and has been continued from term to term, by consent, with a view to settlement.

The application is resisted by the complainant.

George B. Young, R. B. Galusia and H. F. Bigelow, solicitors for petitioner; W. P. Clough, *contra.*

288 NELSON, *J.:*

I have examined the proceedings in the suit sufficiently to ascertain that it is proper and necessary for the petitioner, who succeeded to all the rights vested in the Saint Paul and Pacific Railroad Company, to make itself a party to the suit for the protection of its interests, and in case the complainant should succeed in the suit to

enforce a conveyance of the property in litigation for which the petitioner holds patents.

It is, however, an unknown practice in equity to admit a
289 party as defendant to a suit on his own petition unless the complainant consents, which it does not.

However, when a change in ownership of property takes place, "*pendente lite*," and the legal estate is vested by assignment or otherwise in a stranger to the suit, it is often necessary that the purchaser or assignee should be brought before the court to make effective a decree rendered, and unless the complainant make him a party he may for the protection of his estate become a party by supplemental bill. As stated by the U. S. Supreme Court in Secombe *vs.* Steele, 20th Howard, 107, "If a person, '*pendente lite*,' takes as assignment
290 of the interest of one of the parties to the suit he may, if he pleases, make himself a party by bill, but he cannot by petition pray to be admitted as a party defendant." A reference to authorities is all that is necessary: Daniels Ch. Practice, 282, 288, 329; Secombe *vs.* Steele, 20th Howard, 107; 6 Blatchford Rep., 151; Cooper's Equity Pleadings, 75; 2 Veasey and Beames, 200 pg., Taylor *et al. vs.* Steele, 1 Minn., pg. 274.

The parties to the original bill are made defendants to the supplemental bill, and this is the usual practice.

Even if the petitioner should not file his supplemental bill
291 against one of the defendants he cannot compel the complainant, against objection, to eliminate a defendant from the controversy.

An order will be entered giving the petitioner leave to file a supplemental bill on the rule day in June, 1884. The prayer to become a party defendant, with leave to answer and to have original bill dismissed as to defendant Farley, is denied.

Filed May 3rd, 1884.

OSCAR B. HILLIS, *Clerk*.

292 And on the same day, to wit, pursuant to the opinion on that day filed, the following order was entered of record in Term Minutes "F," page 340, in the words and figures following:

293 United States Circuit Court for the District of Minnesota.

Term Minutes, December Term, A. D. 1883.

SATURDAY MORNING, *May 3rd*, 1884.

Court opens pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY *et als.*

294 The petition and motion of the St. Paul, Minneapolis, and Manitoba Railway Company praying leave to be made and joined a party defendant herein with leave to file a cross-bill,

and that the bill of complaint herein be dismissed as to the defendant, Jesse P. Farley, receiver, having been heretofore heard by the court upon the order to show cause herein, dated April 7th, 1884, and upon the pleadings, proofs, and proceedings in this cause, and taken under advisement, now the court, after due consideration thereof, and being fully advised in the premises, files its written decision concerning the same. Pursuant thereto it is ordered that the

295 said petitioner, The St. Paul, Minneapolis and Manitoba Railway Company, have leave to become a party to this suit by supplemental bill for the protection of its rights and interests involved in this suit, such bill to be filed on or before the rule day in June, 1884, and such further proceedings be had upon the bill exhibited as shall be in accordance with equity; and it is further ordered that the prayer to become a party defendant, with leave to answer, and to have the original bill dismissed as to Jesse P. Farley, receiver, be, and the same is hereby, denied.

296 And afterwards, to wit, on the 28th day of May, A. D. 1884, the supplemental bill of the St. Paul, Minneapolis and Manitoba Railway Co. was filed in this cause in the words and figures following, viz:

Supplemental Bill.

297 No. 3.

Circuit Court of the United States for the District of Minnesota. In Equity.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Supplemental Bill.

R. B. Galusha, complainant's solicitor; Geo. B. Young, H. R. Bigelow, and S. U. Pinney, of counsel.

Filed May 28th, 1884.

OSCAR B. HILLIS, *Clerk.*

298 Circuit Court of the United States for the District of Minnesota. In Equity.

To the judges of the circuit court of the United States for the district of Minnesota:

The Saint Paul, Minneapolis and Manitoba Railway Company, a corporation created and existing by and under and by virtue of the laws of the State of Minnesota and a citizen of said State, brings this its bill of complaint against the Northern Pacific Railroad Company, a corporation created by and existing under an act of Congress enti-

tled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2, A. D. 1864, having its principal office and place of meeting in the city and State of New York and a citizen of said State.

And thereupon your orator complains and says that by an act of Congress approved March 3, A. D. 1857, entitled
Grant of March 3, 1857.
299 "An act making a grant of lands to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," there was granted to the Territory of Minnesota for the purpose of aiding in the construction of railroads from Stillwater by way of Saint Paul and Saint Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory might determine; from Saint Paul and Saint Anthony via Minneapolis to a convenient point of junction west of the Mississippi to the southern boundary of the Territory in the direction of the mouth of the Big Sioux river, with a branch via Faribault to the north line of the State of Iowa west of range sixteen; from Winona via Saint Peter to a point on the Big Sioux river south of the forty-fifth parallel of north latitude; also from La Crescent via Target Lake up the valley of Root river to a point of junction with the last-mentioned road east of range seventeen—every alternate section of land designated by odd numbers for six sections in width on each side of each of said roads and branches; but in case it should appear that the United States had, when the lines or routes of said roads and branches should be definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents, to be appointed by the Governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land, in alternate sections or parts of sections, as should be equal to such lands as the United States had sold or otherwise appropriated, which lands (so selected in lieu of those sold and to which pre-emption rights had attached as
300 aforesaid), together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, were to be held by the Territory or future State of Minnesota for the use and purpose as aforesaid, provided that the land to be so located should in no case be further than fifteen miles from the lines of said roads or branches and selected for and on account of each of said roads or branches; and provided, further, that the lands thereby granted for and on account of said roads and branches severally should be exclusively applied in the construction of that road for and on account of which such lands were thereby granted, and should be disposed of only as the work progressed, and the same

should be applied to no other purpose whatsoever, and that any and all lands theretofore reserved to the United States by any act of Congress or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever, should be, and the same thereby were, reserved to the United States from the operation of said act, except so far as it might be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only should be granted, subject to the approval of the President of the United States, and the lands thereby granted to the said Territory or future State were to be subject to the future disposal of the Legislature thereof for the purposes hereinbefore expressed and no other; that the lands thereby granted were to be disposed of by said Territory or future State only in the manner following—that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches and included within a continuous length of twenty miles of each of said roads and branches might be sold, and when the Governor of said Territory or future State should certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches were completed, then another quantity of land thereby granted, not to exceed one hundred and twenty sec-
301 tions for each of said roads and branches having twenty continuous miles completed as aforesaid and included within a continuous length of twenty miles of each of said roads and branches, might be sold, and so from time to time until said roads and branches should be completed; and if any of said roads or branches should not be completed within ten years no further sale should be made, and the lands unsold should revert to the United States, and in case any lands on the line of said roads or branches were within any Indian territory no title to the same should accrue, nor should the same be entered upon by the authority of said Territory or State until the Indian title to the same should have been extinguished.

And your orator further shows unto your honors that by an act of the Legislative Assemby of the Territory of Minnesota entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," approved May 22, A. D. 1857, a corporation known as and therein called the Minnesota & Pacific Railroad Company was created, with the powers, rights, and franchises in said act specified, with the power, among other things, to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain, and operate a railroad, with one or more tracks or lines of rails, on such route as said company might think proper, from Stillwater, by way of Saint Paul and Saint Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood

Charter and grant to Minnesota & Pacific R. R. Co., May 22, 1857.

river, with a branch from Saint Anthony, via Anoka, Saint Cloud, and Crow Wing to Saint Vincent, near the mouth of the Pembina river, the said railroad and branch being one of the railroads and branches mentioned in said act of Congress
302 of March 3, A. D. 1857; and for the purpose of aiding in the construction of said railroad and branch all the interest and estate, present and prospective, of said Territory and of the future State, which should succeed to it, in or to any or all the lands so granted by the United States to the Territory of Minnesota, for the purpose of aiding in the construction of a railroad from Stillwater by way of Saint Paul and Saint Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing, to the navigable waters of the Red River of the North, as hereinbefore mentioned, agreeable to the terms of said act of Congress, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by said act of Congress, were thereby granted to the said Minnesota & Pacific Railroad Company, conditioned that said land should be exclusively applied to the road for which it was granted; and provided that said lands should vest in said company in the manner following: Whenever twenty or more continuous miles of said road should be located the Governor of the Territory or future State should certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of said lands should vest in said company, and when twenty continuous miles of said road should be completed so as to admit of running regular trains on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands should vest in said company, and so on until said roads should be completed; and that it should be the duty of the Governor so to certify to the Secretary of the Interior whenever any such twenty miles should be completed so as to admit of running regular trains over the same, and the Governor should, in his official capacity, and on behalf of the Territory or State and under the great seal thereof, execute and deliver to the said company, whenever it should, by virtue of the provisions of said act, be entitled to any of said lands, a deed in fee simple
303 of any and all of the lands to which said company should be entitled; that the location and designation of the route and line of said railroad and branch should be made by said company and reported to the Governor from time to time; that said company afterwards and on the 25th day of May, A. D. 1857, was duly organized, and thereupon, by a resolution duly passed by its board of directors, accepted said act and caused a copy of said resolution, certified by its president and secretary under its corporate seal, to be duly filed in the office of the secretary of said Territory.

And your orator further shows unto your honors that the said Minnesota and Pacific Railroad Company entered upon the execu-

tion of the trust committed to it by said act and commenced the survey, location, and construction of the railroad and branch which it was authorized to build and operate, and located the main line of its road from Stillwater by way of Saint Paul and Saint Anthony to a point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river, and filed a map thereof, with resolutions adopting the same, in the office of the Governor of said Territory on the 12th day of November, A. D. 1857, and on or about the date last aforesaid said map and location of said main line terminating at Breckenridge were approved by the Secretary of the Interior and filed in the General Land Office at Washington; that said company did in fact thereafter construct and complete, ready for placing the superstructure thereon, about sixty miles of such railroad and received Minnesota State railroad bonds, issued and delivered to it, to the amount of six hundred thousand dollars or more under and pursuant to section ten of article nine of the constitution of the State of Minnesota, as amended on the 15th day of April, A. D. 1858, and under and by virtue of an act of the Legislature of said State, entitled "An act concerning land-grant railroads," approved on the 12th day of August, A. D. 1858, but that no part of said railroad had been actually completed with the cars running thereon at the time of the pas-
304 sage of the act of said Legislature entitled "An act in addition to an act entitled 'An act concerning land-grant railroads,'" passed August 25th, A. D. 1858, approved March 6th, A. D. 1860; that after the passage of said last-named act, default having been made by said company in the payment of interest on the mortgage bonds of said company issued by it to and held by the State of Minnesota, and the trustees under the deed of trust or mortgage executed by said company upon all its rights, franchises, and property, given to secure such bonds, having neglected to foreclose the same, the Governor of said State did proceed to foreclose and did in fact foreclose such deed of trust, in conformity with the provisions thereof and the statute in such case made and provided, and upon the sale of the said property, rights, and franchises covered by and embraced in said trust deed upon and under such foreclosure, on or about the 23d day of June, A. D. 1860, did bid off and purchase the same for and on behalf of said State of Minnesota at and for the price and sum of one thousand dollars, and the said Governor, by and under the power of sale contained in said trust deed, in the name and on behalf of said company, by a deed bearing date the 16th day of October, A. D. 1860, granted, conveyed, and assigned to the said State of Minnesota all right and equity of redemption of said company in and to said property, rights, franchises, and privileges as described in said trust deed or mortgage, which was dated the 31st day of July, A. D. 1858; that said company wholly failed to construct, put in operation, and equip for business any part or portion of its said railroad prior to the 11th day of March, A. D. 1862.

Location and construction of road.

And your orator further shows unto your honors that the line of the said branch road from Saint Anthony, via Anoka, Saint Cloud,

St. Paul & Pacific R. R. Co. created and the lands, etc., granted to it.

and Crow Wing, to Saint Vincent, near the mouth of the Pembina river, had been duly and definitely located as far as Crow Wing on or about the — day of ——, A. D. 18—, and a map of such definite location was duly adopted by said Minnesota
305 and Pacific Railroad Company and filed with the Governor of said State on or about the — day of ——, A. D. 18—, and with the Secretary of the Interior, at Washington, on or about the — day of ——, A. D. 18—, and that by an act of the Legislature of the State of Minnesota, entitled "An act to facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, it was provided and declared, among other things, in substance, that all the rights, benefits, property, privileges, franchises, and interests of the said Minnesota and Pacific Railroad Company so sold, bid for, and conveyed to the State of Minnesota as aforesaid were thereby granted and transferred to certain persons therein named, their associates and successors, who were therein and thereby created a body politic and corporate by the name and style of the Saint Paul and Pacific Railroad Company, with all the rights, powers, and privileges which theretofore pertained or belonged to the said Minnesota and Pacific Railroad Company, and said persons so named were to be its board of directors until others should be chosen; which grant and transfer were for the purpose and on the terms and conditions named in said act, and it was also thereby provided that for the purpose of aiding in the construction of said road and branch mentioned in said act of Congress and hereinbefore specified all the interest of the State of Minnesota, present and prospective, in and to any and all the lands granted by Congress as aforesaid by said act and theretofore conferred on said Minnesota and Pacific Railroad Company as aforesaid, together with all the rights, privileges, and immunities conferred and intended to be conferred by said act of Congress, were granted to the said Saint Paul and Pacific Railroad Company, upon condition that said land should be applied to the construction and equipment of said road and for no other purpose whatever, and that the said lands should be conveyed to it in like quantities and in like manner substantially as was provided in the case of said Minnesota and Pacific Rail-
306 road Company; which said grant and all and singular its provisions were duly accepted by said Saint Paul and Pacific Railroad Company, and it soon thereafter entered upon the performance of the trust so devolved upon it.

And your orator further shows unto your honors that by a joint resolution of the Congress of the United States to authorize the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes, approved July 12, A. D. 1862, it was recited that by an act of Congress approved March 3, A. D. 1857, there had been granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater, via Saint Paul and Saint Anthony, to a point between the foot of Big Stone

Joint resolution of Congress, July 12, 1862, and acceptance of same.

Lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing to the navigable waters of the Red River of the North, the northern terminus of which had been fixed by the Legislature of said Territory at Saint Vincent, and that it was believed that the public interests required a change of a part of said branch, and by which joint resolution it was resolved and declared that in lieu of that part of the railroad grant to said Territory by said act of Congress of March 3, A. D. 1857, which extended northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian there should be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities might designate, having a southwestern terminus at any point on the existing line between the Falls of Saint Anthony and Crow Wing and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided that such resolution should take effect from the filing in the General Land Office of the acceptance thereof by the aforesaid State of such substitution, whereupon the land north of such intersection aforesaid in the grant, as authorized by said act of March 3, A. D. 1857, being by said
307 acceptance disencumbered of the railroad grant, should be dealt with as public lands of the United States; that the Legislature of the State of Minnesota, by an act entitled "An act to authorize the Saint Paul and Pacific Railroad Company to construct a branch road to Lake Superior," approved March 6, A. D. 1863, assented to and accepted the provisions of said joint resolution and authorized the said Saint Paul and Pacific Railroad Company to survey, locate, construct, and maintain in conformity therewith a new branch railroad within the State of Minnesota, having the southwestern terminus at or above some point opposite the town of Saint Cloud upon the existing branch line of the Saint Paul and Pacific railroad, and extending from thence in a northeasterly direction by such route as it might select to the navigable waters of Lake Superior, at or near the mouth of Pigeon river, by way of Duluth, and the said company was to be entitled to have, receive, and to hold and there was thereby granted to it all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by said joint resolution, and it was to have and possess in respect to said branch railroad all the powers and franchises conferred on said company in and by the said act of the Legislature of said State approved March 10, A. D. 1862, provided that the grants and franchises thereby conferred should in nowise enure to the line of road then located or constructed or to be located or constructed thereafter under the terms of the act of incorporation of said company, and that no act or deed of said company should be competent to embarrass or incumber the grants or franchises thereby made for any purpose connected with the line or lines of road contemplated by the then existing charter of said company; that a copy of said act, duly authenticated under the great seal of said State, was filed by the Governor of said State in the General Land Office on the 26th day of February, A. D. 1864; that at the time when said act and

joint resolution were so passed the said Saint Paul and Pacific Railroad Company had made no location of its said
308 branch to Saint Vincent north or northwesterly beyond Crow Wing, and had not and has never since made any location of said branch line to any point within fifty miles of the junction of said guide meridian with said parallel, as specified in said joint resolution, and the public lands had not then been surveyed within that distance of said point, which is at or about the northwest corner of township one hundred and forty, range thirty-one, nor has said point ever in any way been made a point in the line of the location of said branch railroad; that said Saint Paul and Pacific Railroad Company never located any branch line under said joint resolution and act of the Legislature of the State of Minnesota last aforesaid to Lake Superior, but that the railroad policy of said State of Minnesota was soon thereafter changed in favor of building a line of road from Saint Paul, in said State, to Duluth, on said Lake Superior, and the said branch to Saint Vincent by a direct route from some point at or near Saint Cloud; and, accordingly, by an act of the Legislature of the State of Minnesota, entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved February 6, A. D. 1864, it was provided, among other things, that the Saint Paul and Pacific Railroad Company should have the right to relocate the lines of its road and branches so as to run and construct the main line from Saint Anthony by way of Minneapolis to any point between the foot of Big Stone Lake and the mouth of Sioux Wood river and the branch from Saint Anthony to the Red River of the North, so as to run and construct the same from some point at or near Saint Cloud to any point in the international boundary line near the Red River of the North, and that it should not be required of said company to construct or maintain the said branch road by way of Crow Wing; that that part of the branch line from Saint Cloud to the Red River of the North should be completed within five years, and that there should be no forfeiture of any of the lands, property, privileges, rights, or franchises of said company for a failure to complete the same or any part thereof
309 prior to the time above specified, and said company was thereby authorized and empowered to extend, survey, locate, and construct, maintain, and operate its road from some point at or above Saint Cloud to the westerly end of Lake Superior, and for that purpose was to have and exercise all the rights, immunities, privileges, and franchises conferred in and by its charter applicable to any portion or branch of its road, with power to issue preferred or special stock and make agreements in relation thereto and said land grant, and for a separate organization of the holders of such stock in respect to the portion of the road to which such special stock might pertain, with all the powers of the company, subject to the provisions of such agreement when made and entered into; that by an act of Congress entitled "An act making a grant of lands to the State of Minnesota to aid in the construction of the railroad from Saint Paul to Lake Superior," approved May 5, A. D. 1864, there was then granted to said State for the purpose of aiding in the con-

struction of a railroad from the city of Saint Paul to the head of Lake Superior ever alternate section of public land of the United States, not mineral, designated by odd numbers, to the amount of five alternate sections on each side of said railroad or the line thereof within the State of Minnesota, with provisions for indemnity as therein stated; which said grant was duly accepted by said State on or about the 23d day of February, A. D. 1865.

Organization of First Division of St. Paul & Pacific R. R. Co.

And your orator further shows unto your honors that previous to the 6th day of February, A. D. 1864, preferred or special stock had been duly issued on the line of the said Saint Paul and Pacific Railroad Company from Saint Paul to Watab to the amount of thirty-five hundred shares, and on the line of its said road from Saint Anthony to the point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river to a very large amount, and the holders thereof, under and in pursuance of the act of the Legislature last aforesaid, met, on or about the 6th day of February, A. D. 1864, and organized a corporation known as and called the First Division of the Saint Paul and Pacific Railroad Company, and elected the proper officers therefor, which corporation owned the said railroad from Saint Paul to Watab and that known as the main line from Saint Anthony to the point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, with the rights, property, and franchises belonging thereto or in any manner connected therewith, which acts and things were ratified and confirmed by an act of the Legislature of the State of Minnesota, approved February 6, A. D. 1866, which said organization or agreement was filed in the office of the secretary of the State of Minnesota on the 4th day of May, A. D. 1864; that the Legislature of said State by an act entitled "An act to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches," approved March 2, A. D. 1865, provided, among other things, for an extension of time for building said road and branches of two years, and that all the rights, privileges, franchises, and lands conferred by the said act of the Legislature, approved March 10, A. D. 1862, should be restored, released, and granted to said Saint Paul and Pacific Railroad Company free and clear of all claim and lien of the State thereto; that any and all additional grants of land made prior to the passage of such act or which might thereafter be made by the Congress of the United States to the State of Minnesota for the purpose of aiding in the construction of the lines of railroad or any portion of them authorized to be constructed by the Saint Paul and Pacific Railroad Company should enure to the benefit of said company, and the said lands and the present and future interest of the State in or to them were thereby granted and assigned unto the said company upon the same terms and conditions as the lands theretofore granted for the same purpose, and that the title to lands theretofore or thereafter granted by Congress for the purposes aforesaid should vest in the company at the time or upon the terms prescribed by said act or acts of Congress making the grant, and that it should be the duty of the Governor on behalf of the State to convey to said company

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the lands so granted according to the terms and provisions contained in the act or acts aforesaid; that a considerable time before the passage of said act a bill had been introduced in Congress and was pending therein for an increase and enlargement of said grant hereinbefore set forth, which act was to take effect from and after its passage, and was passed before the approval of said last-named act of the Legislature, and was approved the next day after such State act was approved and became operative; that said State desired and intended to take the benefit of such increase and enlargement of said grant, and did thereafter, in fact, accept the same.

Increase of grant March 3, 1865.

And your orator further shows unto your honors that by an act of the Congress of the United States entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, A. D. 1865, the quantity of lands granted to the State of Minnesota to aid in the construction of certain railroads in said State by the act of March 3, A. D. 1857, aforesaid, was increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts and as thereinafter provided; that in and by section two of said act the first proviso of said act of March 3, A. D. 1857, was so amended as to provide that the land to be so located should in no case be further than twenty miles from the lines of said roads and branches in said act mentioned, to aid in the construction of each of which said grant was made, and that said lands granted should in all cases be indicated by the Secretary of the Interior; that in and by section three of said act it was provided that any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in
312 any object of internal improvement or other purpose whatever were thereby reserved and excepted from the operation of said act, except so far as it might be found necessary to locate the route of said road through such reserved lands, in which case the right of way should be granted, subject to the approval of the President of the United States: Provided, that any lands which had been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands might be located within the limits of such extension of said grant or grants, should be deducted from the full quantity of lands thereby granted, and any lands which had been so granted should be strictly applied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law; that in and by section five of said act it was further enacted that the lands thereby granted should be subject to the disposal of the Legislature of the State of Minnesota for the purposes aforesaid and no other, and that such railroads and branches should be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States; that in and by section six of said act it was enacted that the lands theretofore and by said act granted to the Territory

or State of Minnesota should be disposed of by said State for the purpose aforesaid only and in manner following, namely: When the Governor of said State should certify to the Secretary of the Interior that any section of ten consecutive miles of said road was completed in a good, substantial, and workmanlike manner as a first-class railroad, and the said Secretary should be satisfied that the said State had complied in good faith with such requirement, the Secretary of the Interior should issue to said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed section of ten miles
313 of road and no further; and when the Governor of said State should certify to the Secretary of the Interior and the Secretary should be satisfied that another section, ten consecutive miles in extent, connected with the preceding section or with some other first-class railroad which might be at the time in successful operation, was completed as aforesaid, the said Secretary of the Interior should issue to the said State patents for all the lands granted and situated opposite to and within the limit of twenty miles of said completed section of road or roads, and extending the length of said section and no further, not exceeding ten sections per mile for all that part of said road thus completed under the provisions of said act and the act of March 3, A. D. 1857, and so from time to time until said road and branches should be completed, and that when the Governor of said State should so certify and the Secretary of the Interior should be satisfied that the whole of any one of said roads and branches was completed in a good, substantial, and workmanlike manner as a first-class railroad, the said Secretary of the Interior should issue to said State patents for all lands granted for and on account of said completed road and branches in said act situated within the said limits of twenty miles from the line thereof throughout the entire length of said road and branches: Provided, that nothing therein contained should interfere with any existing rights acquired under any law of Congress theretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads; and provided, that no land should be granted and conveyed to said State under the provisions of said act on account of the construction of any railroad or part thereof that had been constructed under the provisions of any other act at the date of the passage of the present act and adopted as a part of the line of railroad provided for in this act; and provided further, that said lands granted by this or prior acts should not in any manner be disposed of except as the same should be patented under the provisions of the present act; and should the State fail to complete any one
314 of said roads or branches within eight years after the passage of this act, then the said lands undisposed of as aforesaid granted on account of said roads or branches should revert to the United States; that in and by section nine of said act it was enacted that the provisions of said act should also be construed so as to

apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July twelfth, eighteen hundred and sixty-two, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, as though said joint resolution had not been passed, and also to the line adopted by said State in lieu of the portion of the line so vacated; that at the time of the passage of said act no part of the main line of said road from Minneapolis to Breckenridge had been built or constructed, and only that portion of the main and branch line lying between Saint Paul and Elk River, a distance of thirty-eight miles, had then been built and completed.

And your orator further shows unto your honors that by reason of the premises and pursuant to the said several acts of Congress and of the Legislature of Minnesota and the act of said Legislature entitled "An act to legalize and confirm the organization, acts, and proceedings of the First Division of the Saint Paul and Pacific Railroad Company, and in relation to the character and powers of said company," approved February 6, A. D. 1866, to the provisions of which your orator begs leave to refer when produced for greater certainty, the said First Division of the Saint Paul and Pacific Railroad Company became entitled to and vested with all and singular the corporate powers, franchises, and all the rights, privileges, property, benefits, immunities, and lands of the Saint Paul and Pacific Railroad Company granted as aforesaid and belonging and pertaining to the lines of railroad extending from Saint Paul, by way of Saint
Anthony, to Watab, north of Saint Cloud, and from Saint
315 Anthony to Breckenridge, at or near the mouth of the Sioux
Wood river, and did thereupon proceed to construct, complete, and equip, and did fully construct, complete, and equip, the said lines, except about four miles on the north end of said line to Watab, to the approval and satisfaction of the State of Minnesota and the United States, prior to the 25th day of October, A. D. 1871, and that after its said organization the said First Division of the Saint Paul and Pacific Railroad Company owned, operated, and controlled the said lines of road and the lands granted to aid in the construction of the same, and on said 25th day of October, A. D. 1871, it had become legally entitled to all such land, subject to certain deeds of trust or mortgages and bonds thereby secured, all of which it was liable and bound to pay off and discharge; that prior to the organization of said First Division of the Saint Paul and Pacific Railroad Company the said Saint Paul and Pacific Railroad Company had made an agreement with the corporators of the Stillwater and Saint Paul Railroad Company by which it agreed to relinquish to the last-named company that part of its main line of road between Stillwater and Saint Paul, with the rights, franchises, lands, and privileges pertaining to the same, which said agreement was afterwards assented to and confirmed by and on behalf of said State, and the said Saint Paul and Pacific Railroad Company was released from its obligation to construct the portion of its main line so relinquished, and from all penalties or forfeitures by reason of its non-

construction thereof, by an act of the Legislature of the State of Minnesota entitled "An act confirming an agreement between the Saint Paul and Pacific Railroad Company and the corporators of the Stillwater and Saint Paul Railroad Company, and authorizing said Stillwater and Saint Paul Railroad Company to construct that portion of the main line of said Saint Paul and Pacific Railroad Company between Stillwater and Saint Paul, and granting lands in aid of the construction of said part of said main line," approved March 4, A. D. 1867.

316 And your orator further shows unto your honors that by and under an act of the Congress of the United States entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2, A. D. 1864, the corporation defendant, The Northern Pacific Railroad Company, was created, with the powers and franchises therein mentioned, to lay out, locate, construct, furnish, and maintain a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as should be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget Sound, and that it was provided, among other things, in and by said act that there be, and thereby was, granted to said Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company might adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passed through any State, and whenever on the line thereof the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road should be definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of said sections should have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands should be selected by said company in lieu thereof, under the direction of the Sec-

317 retary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route should be found upon the route of any other railroad route to aid in the construction of which lands had been theretofore granted by the United States, as far as the routes were upon the same general line, the amount of land theretofore granted should be deducted from the amounted granted by said act, and upon completion of said railroad and telegraph line in sections of twenty-five miles each patents of

Organization of and grant to The Northern Pacific Railroad Company.

lands as aforesaid were to be issued to said company, confirming to it the right and title to said land situated opposite to and coterminous with such completed section, and so on for each section of road as it should be completed; that the President of the United States should cause the land to be surveyed for forty miles in width on both sides of the entire line of said road after the general route should be fixed and as fast as might be required by the construction of the said railroad; and the odd-numbered sections of land thereby granted should not be liable to sale or entry or pre-emption before or after they were surveyed, except by said company, as provided by said act; but the provisions of the act of September, A. D. 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May 20, A. D. 1862, were extended to all other lands on the line of said road, when surveyed, excepting those thereby granted to said company; that afterwards it was provided by Congress by joint resolution entitled "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," approved May 31, A. D. 1870, that in the event of there not being in any State or Territory in which the main line of the road of said company, at the time of the final location thereof, the amount of lands per mile granted by
Congress to said company within the limits prescribed by its
318 charter, then said company should be entitled, under the
directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States and designated by odd numbers in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as would make up such deficiency on said main line, except mineral and other lands, as excepted in the charter of said company of July 2, A. D. 1864, to the amount of the lands that had been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of said act of July 2, A. D. 1864, and that Congress might at any time alter or amend such resolution, having due regard to the rights of said company and any other parties.

Location of part of branch of St. Paul & Pacific R. R. in 1869.

And your orator further shows unto your honors that the said Saint Paul and Pacific Railroad Company surveyed and located the line of its said branch road to Saint Vincent from Crow Wing (to which point it had theretofore been located) to a point near the center of the tier of townships number one hundred and forty-two, in range number forty, on or near the bank of the Wild Rice river, passing between Otter Tail and Rush lakes, which was as far north as the public surveys had then been completed, and that after such location had been adopted a map thereof was duly made and certified and filed in the office of the Governor of Minnesota, and a map thereof duly and properly certified, dated the 19th day of October, A. D. 1869, was filed with the Secretary of the Interior on or about the 1st day of December, A. D. 1869, but objections were made to said location

by the Secretary of the Interior soon thereafter and subsequent proofs were submitted to him to show the propriety of such location, which he deemed inadequate, and further proofs were required by him in reference thereto; that the general course of said located line was substantially the same as the definite location of the line of the route of the road of said Northern Pacific Railroad Company as subsequently located for over fifty miles, said last-
319 named line being found to be upon substantially the same route and general line for that distance as the said route and line of the said Saint Paul and Pacific Railroad Company from Crow Wing to the said Wild Rice river.

Location of general route of the Northern Pacific R. R. Aug. 15, 1870.

And your orator further shows unto your honors that afterwards and on or about the 25th day of July, A. D. 1870, the said Northern Pacific Railroad Company adopted a pretended survey of a general route for its road theretofore made, and on or about the 15th day of August, A. D. 1870, filed the same in the General Land Office at Washington, under section three of its said charter, to fix the general route of its road, and subsequently and on or about the 12th day of October, 1870, it filed in said Land Office another pretended map or location of the general route of its said road, called by it an amended location of such general route, differing in many important particulars from said location so first filed by it as aforesaid; but your orator submits that said company had already exhausted its powers in that behalf, and that said so-called map of amended location of the general route was and is wholly unauthorized, inoperative, and void, but whether any such route or routes were ever actually in any way or manner surveyed or staked out your orator is unable to state, upon information and belief or otherwise.

Relation of N. P. R. R. Co. to Saint Paul & Pacific and First Division Co.'s and control over same.

And your orator further shows unto your honors that in the latter part of October, A. D. 1870, or in the month of November of that year, the said Northern Pacific Railroad Company had become the owner, by purchase, of all or nearly all of the shares of the stock of the Saint Paul and Pacific Railroad Company, and at a meeting of the directors of the latter company, in the month of November or December of said year, by virtue of its said ownership the said Northern Pacific Railroad Company procured and caused the resignation of all the directors of said Saint Paul and Pacific
320 Railroad Company except one, and caused the vacancies so created to be filled with persons who were members of the board of directors, whereby it acquired and continued to have for the period of more than two years thereafter the entire control and use of the franchises, privileges, and property of the said Saint Paul and Pacific Railroad Company and dictated and controlled its management and the policy of said company; that in like manner and prior to the 29th day of November, A. D. 1870, the said Northern Pacific Railroad Company had become the owner and holder of all or the greater part of the shares of stock of the First Division of the Saint Paul and Pacific Railroad Company, and by reason of the

premises caused and procured the resignation, on the day and year last aforesaid, of a majority of its directors and filled the vacancies so created with members of the board of directors of its own company, whereby it acquired and continued to have a like control and use of the franchises, privileges, and property of said last-named company and dictated and controlled, through such members of its board, the management and the policy of said First Division of the Saint Paul and Pacific Railroad Company; that immediately after so acquiring control over the policy and affairs of said Saint Paul and Pacific Railroad Company as aforesaid the policy of said last-named company, at the instigation of the Northern Pacific Railroad Company and through the influence and action of members of its board of directors, constituting a majority of the board of directors of the Saint Paul and Pacific Railroad Company, was changed, and it was decided by both of said companies that inasmuch as the said Northern Pacific Railroad Company was building its road from Lake Superior west through Minnesota and intended to cross the Mississippi river with its line of definite location and road at or near Crow Wing, and as its line westwardly would be upon and in the same general direction for more than fifty miles as the said line of the said Saint Paul and Pacific Railroad Company from Crow Wing to Wild Rice river, so located during the previous year, in order to prevent a great loss of lands thereby to the Northern
321 Pacific Railroad Company under its charter, and so as to secure the Saint Paul and Pacific Railroad Company against any loss or diminution in its grant, and to the end that the greatest quantity possible should be obtained for such Saint Paul and Pacific Railroad Company for its Saint Vincent Branch and for said Northern Pacific Railroad Company, that the said Saint Paul and Pacific Railroad Company should abandon the building of its projected branch line from, at, or near Saint Cloud to Lake Superior, and an act of Congress should be procured, if possible, to enable it to relocate its branch lines so as to run the branch to Saint Vincent directly from Saint Cloud west of said Otter Tail Lake and obtain the extension of its line from Crow Wing to Brainerd, a distance of about ten miles, so that it would form a connection with the road of the said Northern Pacific Railroad Company, which it was designed should there cross the Mississippi river; that in accordance with the change of policy so dictated and adopted as aforesaid, and in order to effect an advantageous exchange of lands between the said two companies, and in consideration thereof, and as it was understood and believed that such result would greatly promote their respective interests and the public interest and welfare by the construction of both of said railroads, and so secure to the United States the benefits and advantages contemplated thereby, the said companies so controlled and managed as aforesaid solicited and procured appropriate legislation for that purpose, amendatory of the previous legislation, both State and congressional, in relation to said roads and their respective grants and designed and intended to carry out the purposes above stated, as hereinafter shown.

And your orator further shows unto your honors that to the end and in order to accomplish the purpose last above stated the said Northern Pacific Railroad Company and said Saint Paul and Pacific Railroad Company, so controlled as aforesaid, made application for and procured the passage of an act of the Congress of the United

Act of March 3, 1871. Change of route of branch line to Saint Vincent.

322 States entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its line, in consideration of a relinquishment of lands," approved March 3, 1871, by which it was provided that the Saint Paul and Pacific Railroad Company might so alter its branch lines that, instead of constructing a road from Crow Wing to Saint Vincent and from Saint Cloud to the waters of Lake Superior, it might locate and construct, in lieu thereof, a line from Crow Wing to Brainerd to intersect with the Northern Pacific railroad and from Saint Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to Saint Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines as was provided for the then present lines by existing laws: Provided, however, That such change should in no manner enlarge said grant, and that such act should only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases should be made to the United States by said company of all lands along said abandoned lines from Crow Wing to Saint Vincent and from Saint Cloud to Lake Superior, and that upon the execution of said release such lands so released should be considered as immediately restored to market without further legislation; that the said Saint Paul and Pacific Railroad Company, on the 22d day of March, A. D. 1871, by resolutions duly passed by its board of directors, accepted said act and altered the location of its said branch lines so as to conform to said act, and authorized and directed its president and secretary to execute, under the corporate seal thereof, to the United States the release of lands appertaining to the routes thereby abandoned mentioned in said act as one of the conditions thereof, and generally to do every act and thing necessary and proper to secure to said company the benefit of said act, and that the said company should commence the surveys of said roads and

323 locate the same to Brainerd and to the point of intersection with the Northern Pacific railroad at or near Otter Tail or Rush Lake and thence to Saint Vincent at the earliest practicable moment, and prepare and file in the office of the Secretary of the Interior the maps and papers necessary to retire the lands granted by Congress, and that when said roads should be surveyed the said First Division of the Saint Paul and Pacific Railroad Company be requested to proceed, in pursuance of their contract for that purpose, to construct said roads at the earliest possible period consistent with the finances of said company; that said company thereby adopted as lines for its said branch roads the following, to wit: "Commencing at a point at or near Crow Wing, thence following the general course of the Mississippi river on the easterly side to a

junction with the Northern Pacific railroad, in the town of Brainerd, on the Mississippi river; also from a point on the line of the First Division of the Saint Paul and Pacific railroad near Saint Cloud or Sauk Rapids, thence by the most direct and feasible route via Saint Cloud to a point of junction with the Northern Pacific railroad at or near Otter Tail or Rush Lake, and thence to Saint Vincent, on the boundary line of the British possessions;" and your orator alleges that said act of Congress was and is in conformity with the legislation of the State of Minnesota.

Location and survey of new line under act March 3, 1871.

And your orator further shows unto your honors that in pursuance of said act and said resolutions the said Saint Paul & Pacific Railroad Company, so being under the control and direction of the said Northern Pacific Railroad Company, and with its approbation and concurrence and direction, commenced the work of locating definitely the said Saint Vincent Branch of its railroad under said act of March 3, A. D. 1871, and completed the same prior to the 30th day of September, A. D. 1871, so far as the work in the field was concerned, by staking out said line and marking the same with stakes or posts driven into the ground at every interval of one hundred
324 feet, from Saint Cloud to Saint Vincent by way of and through the towns of Melrose, Sauk Centre, Alexandria, Fergus Falls, Glyndon, and Crookston, and said company duly adopted said survey as the line of definite location of said road, and a duly authenticated and certified map thereof was filed with the Governor of said State on the 7th day of November, A. D. 1871, and also with the Secretary of the Interior of the United States on the 18th day of the same month and three days before the said Northern Pacific Railroad Company filed in the office of the Commissioner of the General Land Office a plat of the definite location of its road fixing the line thereof under section three of its said charter, and said survey of said Saint Vincent Branch road was so located in the field before the survey in the field of the line of definite location of said road of the Northern Pacific Railroad Company was located or staked out on the ground across the conflict or interference of the land limits of the two companies at and adjacent to Glyndon, where said lines cross each other; that afterwards and on the 19th day of December, A. D. 1871, the said Saint Paul and Pacific Railroad Company also filed with the said Secretary of the Interior the formal release required by said act of March 3, A. D. 1871, duly executed by said company, and thereupon said location was approved and said plat thereof was filed in the General Land Office on the 20th day of December, A. D. 1871; that said definite location of said Saint Vincent Branch road was afterwards duly ratified and confirmed by an act of the Congress of the United States entitled "An act for the extension of the time to the Saint Paul and Pacific Railroad Company for the completion of its roads," approved March 3, A. D. 1873, by which it was provided, among other things, that the time for the completion of the railroad from Saint Cloud to Saint Vincent, in said State, as then located, with the approval of the Secretary of the Interior, be extended for the period of nine months from the time

limited by the acts of Congress relating to the same; that
325 said location was also pursuant to authority contained in the charter of said Saint Paul and Pacific Railroad Company and acts amendatory thereof hereinbefore referred to, and was afterwards ratified and approved by the Legislature of the State of Minnesota hereinafter mentioned, and particularly by an act of the Legislature of the State of Minnesota entitled "An act to extend the time for the completion of certain branch lines of the railroad of the Saint Paul and Pacific Railroad Company," approved March 11, A. D. 1873, by which the time for the grading and completion by the Saint Paul and Pacific Railroad Company of its branch lines of railroad in accordance with the change of such branch lines authorized by the said act of Congress of March 3, A. D. 1871, was extended to and until the first day of January, A. D. 1874: Provided, that the branch line of railroad running from Saint Cloud to Saint Vincent should run by Sauk Centre, Osakis, Alexandria, Fergus Falls, and Glyndon.

And your orator further shows unto your honors that soon after the passage of the said act of Congress of March 3, A. D. 1871, had been procured as aforesaid, and as part of the plan and policy adopted by the Saint Paul and Pacific Railroad Company and the said First Division of the Saint Paul and Pacific Railroad Company, under the control as aforesaid and with the assent of the said Northern Pacific Railroad Company, an agreement was entered into by and between the said Saint Paul and Pacific Railroad Company and the said First Division of the Saint Paul and Pacific Railroad Company on or about the first day of April, A. D. 1871, by which the said last-named company agreed with the said Saint Paul and Pacific Railroad Company to construct, complete, equip, and put in running order, within the time required by said acts of Congress and of the Legislature of the State of Minnesota, the said branch lines of its road mentioned in said acts of Congress of March 3, A. D. 1871, so
326 that the said Saint Paul and Pacific Railroad Company should become vested with the legal title to the lands so granted in and by the same, and to issue and negotiate its bonds to an amount in the aggregate of fifteen millions of dollars, with interest coupons annexed, payable January 1st, A. D. 1901, and the said Saint Paul and Pacific Railroad Company agreed to secure the payment of said bonds and interest coupons, payable semi-annually at the rate of seven per cent. per annum, by the execution and delivery of a deed of trust or mortgage to trustees upon the said railroads, with their respective equipments and appurtenances and franchises, and also of and upon all the right, title, and interest then held or to be thereafter acquired by it in and to the lands granted by Congress as aforesaid to aid in the construction of said branch railroads or either of them, and, subject to said deed of trust or mortgage, it was also to execute and deliver to said First Division of the Saint Paul and Pacific Railroad Company and said company agreed to accept a lease of said railroads for the term of ninety-nine years, it agreeing to operate, maintain, and supply from time to time said railroads, with all necessary and proper equipment, and to pay over in each

Contract and lease between the St. Paul & Pacific Co. and the First Division Company.

and every year of said term and as fast as realized any and all net earnings and income of the said railroads and premises to the trustees for the time being under such deed of trust or mortgage, to be applied to the payment of the interest on the said bonds and the principal thereof, and when said bonds should be fully paid to pay thereafter all net earnings of said railroads or either of them to the said Saint Paul and Pacific Railroad Company to an amount equal to a dividend of six per centum per annum on its stock then issued and outstanding; and said last-named company agreed that it would execute such trust deed and lease and suffer said First Division of the Saint Paul and Pacific Railroad Company to exercise all its rights, privileges, and franchises in respect to said roads, and to maintain, operate, and enjoy said railroads for and during
327 the term aforesaid; and that on said 1st day of April, A. D. 1871, said Saint Paul and Pacific Railroad Company duly executed and delivered to said First Division of the Saint Paul and Pacific Railroad Company such lease as so agreed upon.

And your orator further shows unto your honors that on or about the said 1st day of April, A. D. 1871, pursuant to said agreement, said First Division of the Saint Paul and Pacific Railroad Company issued its bonds, bearing date the day and year last aforesaid, to the amount of fifteen million dollars, with coupons for the payment of interest thereon semi-annually at the rate of seven per cent. per annum, and on or about the day and year last aforesaid the said Saint Paul and Pacific Railroad Company, in compliance with said agreement, duly executed and delivered to Horace Thompson, George L. Becker, and William G. Moorhead, trustees, its certain deed of trust or mortgage, bearing date the day and year last aforesaid, to secure the payment of the principal and interest of said bonds, as the same should become due and payable and as in said trust deed provided, upon all and singular the said lines of railroad provided for in said act of Congress of March 3, A. D. 1871, and so located as aforesaid, together with the equipments, appurtenances, and the rights, privileges, and franchises thereunto respectively belonging or in anywise appertaining, or which should or might thereafter belong or appertain thereto, and also upon all the right, title, and interest which said Saint Paul and Pacific Railroad Company then had or which it or its successors or assigns should or might at any time thereafter acquire by reason of the construction of said railroads or of either of them or of any part of either of them or otherwise, in, to, or concerning the lands which were embraced or intended to be embraced in the said grants of lands made by the aforesaid acts of Congress respectively, and which had been or should or might be granted or conveyed to the said Saint Paul and Pacific Railroad Company, its successors or
328 assigns, to aid in the construction of the said lines of railroad or either of them or any part thereof, which said trust deed was soon thereafter duly acknowledged and recorded according to the laws of said State of Minnesota; that each of said bonds, on the face thereof, purported and stated that it was a "first-mortgage

The $15,000,000 trust deed or mortgage.

bond upon three hundred and forty-eight miles of railroad and two million two hundred and seventeen thousand two hundred acres of land," being at the rate of ten full sections of six hundred and forty acres each for each mile of said railroads; that said bonds were negotiated and sold in order to raise money with which to build, complete, and equip said lines of railroad, under and pursuant to said agreement between the said First Division of the Saint Paul and Pacific Railroad Company and said Saint Paul and Pacific Railroad Company, and while said companies were so controlled and managed by said Northern Pacific Railroad Company, and in order to effectuate and carry out its railroad policy; that said representation upon said bonds and each of them was made with intent that it should be relied on by the parties who might purchase the same, and in order that they might be more readily sold, and was relied on by those who purchased the same accordingly.

And you orator further shows unto your honors that the said First Division of the Saint Paul and Pacific Railroad Company, with the means so provided as aforesaid, and under the control and direction of the Northern Pacific Railroad Company, exercised by and through William G. Moorhead, one of its directors, acting as construction agent, entered upon the work of building said branch roads according to said agreement, and graded and ironed the same from Saint Cloud to Melrose, a distance of thirty-five miles, and also from a point twelve miles south of Glyndon, where said line crosses the line of the road of the said Northern Pacific Railroad Company, to a point ninety-two miles north of said Glyndon, in all for a distance of one hundred and thirty-nine miles; but the said

Default of First Division Co. to build and pay interest, etc. Receivership, etc.

329 First Division of the Saint Paul and Pacific Railroad Company, in the fall of the year 1872, became and was unable to further proceed with said work, and suspended work on said road, and subsequently made default in the payment of the interest matured on the bonds so issued by it and negotiated as aforesaid and secured by said trust deed or mortgage; that on or about the 10th day of July, A. D. 1873, John S. Kennedy, Henry M. Baker, and John S. Barnes, citizens of the State of New York and holders of certain of said bonds so secured and negotiated as aforesaid, suing on behalf of themselves and all other holders of such bonds who might come in and seek relief in such suit, filed their bill in equity in this court against the said Northern Pacific Railroad Company, the First Division of the Saint Paul and Pacific Railroad Company, the Saint Paul and Pacific Railroad Company, the said George L. Becker, William G. Moorhead, and Horace Thompson, the trustees under the said trust deed, and others, as defendants, setting forth the suspension of said work, the default in the payment of interest on such bonds, the insolvency of the said First Division of the Saint Paul and Pacific Railroad Company, the maker of said bonds, and that the lands granted to aid in building said road, and included in said trust deed as security for said bonds, would be lost if said work was not resumed and carried forward to completion, the ownership by the said Northern Pa-

cific Railroad Company of the entire capital stock of said two other companies and its control over the same, and the conflict in the land limits of the said Northern Pacific Railroad Company and the said Saint Paul and Pacific Railroad Company at the crossing of the lines of said roads at Glyndon aforesaid, and which had then arisen, as hereinafter stated, the utter inadequacy of the security so given to secure the payment of said bonds, and charging, among other things, the wrongful diversion by the said First Division of the Saint Paul and Pacific Railroad Company, by the consent of the said Becker and Moorhead, two of the said trustees, of about three million dollars of the
330 proceeds of said bonds so issued and negotiated to the completion of its own lines of railroad, which said bill prayed, among other things, for the appointment of a receiver to take possession of said mortgaged lines of the Saint Paul and Pacific Railroad Company, with power to borrow money and complete said road or so much thereof as could be completed before the forfeiture of said grant, with such further or other powers as might be necessary, proper, and usual to protect the rights and interests of such bondholders; that such proceedings were thereupon afterwards had in this court in said suit that by its order duly made on the 4th day of August, A. D. 1873, afterwards changed and modified by an order of this court dated September 1, A. D. 1873, and subsequently renewed and extended, Jesse P. Farley was by this court duly appointed receiver of all and singular the said branch lines of railroad of the Saint Paul and Pacific Railroad Company and of all its property, rights, privileges, and franchises, with the appurtenances so mortgaged as aforesaid, with power and authority to borrow money upon the credit of the same on debentures to be issued under the direction of the court, and to be a first lien on said mortgaged property, and with such money to complete and equip said railroad or such parts thereof as he should be able to complete and equip within the life of said land grant, to which said bill of complaint and said orders remaining of record in this court your orator begs leave to refer for greater certainty and fullness of statement when the same shall be produced; that the said Jesse P. Farley duly qualified as such receiver and immediately entered upon the duties of his said trust.

And your orator further shows unto your honors that the time for completing said branch lines of road, and particularly the one from Saint Cloud to Saint Vincent, was extended from time to time by the Legislature of the State of Minnesota by divers and sundry
331 acts, the last of which is entitled "An act to amend chapter two hundred and one of the special laws of 1877, entitled 'An act to provide for the completion of the lines of railroad commonly known as the Saint Paul and Pacific Extension lines,'" approved March 9, A. D. 1878; that the said Jesse P. Farley, as such receiver, acting under the authority of this court, during the fall of 1873 borrowed money upon debentures issued under the orders of this court, proceeded with the work of construction of the said uncompleted lines

Completion of the St. Vincent Branch and acceptance of same.

of railroad, and prior to the first day of January, A. D. 1874, fully completed and equipped, in accordance with the requirements of the several acts of Congress and the laws of Minnesota relating to such lines, all and singular so much of said lines as had been graded and ironed by the First Division of the Saint Paul & Pacific Railroad Company, as hereinbefore stated, to wit, that portion thereof extending from Saint Paul to Melrose, a distance of thirty-five miles, and that portion thereof extending from a point twelve miles south of Glyndon to a point ninety-two miles north thereof; that the said portions of said road which were so completed were constructed and equipped in all respects as a first-class railroad on and along the line of definite location so filed with the Secretary of the Interior on the 18th day of November, A. D. 1871, and approved by him on the 20th day of December of the same year, a map whereof had been filed with the Governor of Minnesota on the 7th day of November, A. D. 1871, and that said portions of said road have been accepted and approved by the Governor of Minnesota and the Secretary of the Interior, in accordance with the acts of Congress and of the Legislature of Minnesota in such case made and provided, and that the said Jesse P. Farley continued to maintain and operate the same until they were sold and conveyed to your orator, as hereinafter stated; that in like manner the remainder of said line of road from Saint Cloud to Saint Vincent, so located as aforesaid under said act of Congress of
332 March 3 1, A. D. 1871, was fully completed and equipped as a first-class railroad, and in all respects as required by law and within the time limited by the Legislature of Minnesota, in part by the said Jesse P. Farley, as such receiver, and under the authority of the orders of this court, and in part by your orator, as purchaser of said line of road and appurtenances under the decree of this court, as hereinafter stated, prior to the 4th day of December, A. D. 1879, upon and along said line of definite location last mentioned, and to the acceptance of the Governor of the State of Minnesota and of the Secretary of the Interior of the United States, in all a distance of three hundred and fifteen miles, from Saint Cloud to Saint Vincent, and the same has ever since been maintained and operated by your orator.

And your orator further shows unto your honors that after default had been made in the payment of accrued interest on the said bonds so secured by said trust deed or mortgage and before the first day of December, A. D. 1875, the said trustees so originally named therein were, by the holders of the bonds secured thereby, duly removed from their said trust, and Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall were chosen as trustees under the same in their stead, pursuant to an authority therein contained for that purpose; that afterwards and on or about the 27th day of December, A. D. 1875, the said Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, as such trustees, commenced a suit in this court, on the equity side thereof, against the Saint Paul and Pacific Railroad Company, the First Division of the Saint Paul and Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and

Foreclosure of $15,000,000 trust deed.

Charles A. F. Morris for the foreclosure of said trust deed or mortgage and for other purposes; that afterwards and at the December term of said court, A. D. 1878, to wit, on the 11th day of April, A. D. 1879, such further proceedings were had in said cause in said court, the said court then and there having jurisdiction of said cause
333 and of the parties thereto; that a final decree was rendered therein, in and by which it was adjudged and decreed, among other things, that said mortgage or deed of trust was sufficient in form to convey and mortgage all and singular the lines of road, land grants, property, and franchises in said mortgage described, to wit, all and singular the line of railroad of the said corporation, the Saint Paul and Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Kittson and State of Minnesota, and also all and singular the line of railroad which said defendant corporation, The Saint Paul and Pacific Railroad Company, was authorized to construct from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town, as contemplated by the act of Congress approved March 3, A. D. 1871, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges, and corporate or other franchises thereunto respectively belonging or in anywise appertaining, or which should or might at any time thereafter thereunto belong or in anywise appertain, and also all the right, title, and interest which the said defendant, The Saint Paul and Pacific Railroad Company, then had or that it or its successors or assigns might at any time afterwards acquire by reason of the construction of said railroads, or of either or of any part of either thereof or otherwise, in, to, or concerning the lands situate, lying, and being in the State of Minnesota, which were embraced or intended to be embraced in the grants aforesaid or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of March 3, A. D. 1857, March 3, A. D. 1865, and March 3, A. D. 1871, respectively, which were granted by said State to said railroad company or should or might be granted or conveyed to it, its successors or assigns, to aid in the construction of the said lines of railroad, or of either or of
334 any part of either thereof, including in the premises thereby conveyed the road-beds of the said railroads respectively and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings, and materials whatsoever placed or to be placed on the said railroads respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars and all other rolling stock whatsoever, and all machinery, tools, and implements, fuel and materials for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of

said railroads or either or any part of either thereof, held by the said Saint Paul and Pacific Railroad Company or thereafter to be acquired by the same, its successors or assigns, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said St. Paul and Pacific Railroad Company in, to, or concerning the same and each and every part and parcel thereof, with the appurtenances, and that the same, upon the execution and delivery of said deed of trust, became subject to the lien thereof; that there was then due and unpaid upon the said bonded indebtedness the principal sum and amount of fifteen million dollars and the interest thereon from July 1, A. D. 1874, which said principal and interest were a lien upon said mortgaged property and franchises, as thereinbefore specially stated; that the defendant, The said First Division of the Saint Paul and Pacific Railroad Company, pay the same within five days, and in default thereof that all and singular the said mortgaged property, rights, immunities, and franchises be sold by one
335 of the masters of said court as one parcel and as an entire property to the highest and best bidder therefor, but for a price not less than one million five hundred thousand dollars; that the right and equity of redemption of the said defendants in said suit and all other persons claiming by, through, or under them or either of them should be absolutely foreclosed and barred, save only such right of redemption, if any, as might exist under the statute of Minnesota, and that upon the payment of the purchase-money bid at such sale and the confirmation thereof by the court the said master should execute and deliver a certificate or deed of conveyance of the said premises so sold to the purchaser or purchasers thereof.

Sale under decree to Saint Paul, Minneapolis & Manitoba R'y Co., and confirmation.

And your orator further shows unto your honors that the said master duly advertised all and singular said premises for sale under said decree, as therein provided and as required by law, on the 14th day of June, A. D. 1879, and that pursuant to such previous notice thereof and at the time and place so appointed, and in conformity with the directions and provisions contained in said decree, said master duly sold all and singular said property and premises to your orator, it being the highest and best bidder therefor, for the price and sum of one million six hundred thousand dollars duly paid therefor, and that said sale was duly reported by said master to said court, and that afterwards and during the June term thereof, to wit, on the 21st day of June, A. D. 1879, said court duly confirmed said sale and report and all proceedings relating thereto in all respects, and ordered and directed that said master forthwith execute and deliver to your orator, the purchaser at said sale, a certain certificate or conveyance of said property and premises so sold by him as aforesaid, and then submitted to the court with his report, as in and by said decree it was provided, and

the form of which said certificate or conveyance was then and there approved by said court; that said master then and there, in pursuance of said decree and order of confirmation, duly exe-
336 cuted and delivered to your orator such certificate or conveyance, whereby the title to all and singular the property described in and by said trust deed or mortgage and in said decree became and was and now is well vested, both in law and equity, in your orator, and whereby it has succeeded to all the right, title, and interest of the said parties to said suit of foreclosure in and to the lands and premises in controversy, as hereinafter stated, and to all their rights in and to the lands within the limits, both place and indemnity, of the road of the said Saint Paul and Pacific Railroad Company, and also within the limits, both place and indemnity, of the said Northern Pacific Railroad Company, where its said lands cross the said limits of the said Saint Paul and Pacific Railroad Company at Glyndon aforesaid, and that by the said completion of said branch road from Saint Cloud to Saint Vincent as aforesaid your orator is now well entitled to have and hold the legal title to all lands upon odd-numbered sections embraced within the crossing of the place and indemnity limits of said railroad at and near Glyndon aforesaid.

Completion of road of First Division Company and sale to Saint Paul, Minneapolis & Manitoba Railway Company.

And your orator further shows unto your honors that the lines from Saint Paul to Watab and from Saint Anthony to Breckenridge, at the mouth of the Sioux Wood river, with the appurtenances, which belonged to the said First Division of the Saint Paul and Pacific Railroad Company, were fully completed, as required by law, on or about the 25th day of October, A. D. 1871; that the said roads and their appurtenances and the said lands granted to aid in completing them had been incumbered by divers and sundry trust deeds or mortgages for great sums of money, and that said trust deeds were afterwards duly foreclosed in the district court of Minnesota for Ramsey county for the non-payment of the moneys due thereon, and all said premises, upon such foreclosures, were duly sold and conveyed to the purchaser at such sale, and the same
337 have been since duly conveyed to and vested in your orator and are now held and owned by it, as well as the property so sold and conveyed by said master under said decree of foreclosure as aforesaid.

Act confirming purchases of Saint Paul, Minneapolis & Manitoba R'y Co. and its organization, etc.

And your orator further shows unto your honors that by an act of the Legislature of the State of Minnesota, approved March 7, A. D. 1881, and being chapter 412 of the special laws of said State for that year, it was enacted and declared, among other things, that the said purchases made by your orator and mentioned, as evidenced by the several instruments of conveyance and transfer duly entered and remaining of record in the office of the secretary of state of said State of Minnesota, to wit, the several purchases so made of the main and branch lines, so called, formerly owned by the First Division of the Saint Paul and Pacific Railroad Company, and of the extension line, extending from East Saint Cloud to Saint Vincent and the in-

ternational boundary line, formerly owned by the Saint Paul and Pacific Railroad Company, with the equipments, land grants, lands, property, benefits, privileges, immunities, and corporate and other franchises and powers pertaining to said main, branch, and extension lines, respectively, as well as the said several instruments of conveyance and transfer and the organization of said Saint Paul, Minneapolis and Manitoba Railroad Company, were fully ratified and confirmed, and the said Saint Paul, Minneapolis and Manitoba Railway Company, in the use and enjoyment and in the management, operation, and conduct of said main and branch line and the land grants and lands appertaining thereto, should have, possess, enjoy, and exercise, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the First Division of the Saint Paul and Pacific Railroad Company with respect to said main and branch lines and in the use and en-
338 joyment and in the management, operation, and conduct of the business of said extension line and the lands and land grants appertaining thereto, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the Saint Paul and Pacific Railroad Company with respect to said extension line; and in and by said act it was further enacted that any of said instruments of conveyance and transfer might be proved by the record thereof aforesaid or by a duly certified copy of such record, as well as by the production of the instrument itself, and that said act should be legal evidence of the corporate character and powers of said Saint Paul, Minneapolis and Manitoba Railway Company in all courts and places whatsoever, and that said act should take effect and be in force from and after its passage.

And your orator further shows to your honors that until after the said First Division of the Saint Paul and Pacific Railroad Company had abandoned work on the said branch lines which it had so agreed to construct, complete, and equip in all its dealings and transactions with said last-named company and with the Saint Paul and Pacific Railroad Company, and in putting forth said bonds so secured by said trust deed or mortgage, with the said statement thereon contained, the said Northern Pacific Railroad Company had in all respects admitted and conceded that the said Saint Paul and Pacific Railroad Company had paramount and exclusive right to all the odd-numbered sections within the said conflicting limits at and near Glyndon aforesaid, and said bonds were so negotiated and sold upon the faith of such concession, and when, by virtue of its ownership of the stock of said Saint Paul and Pacific Railroad Company and of the stock of said First Division of the Saint Paul and Pacific Railroad Company, it had complete control of the acts, conduct, and policy of said two last-named companies; that the said Northern Pacific Railroad Company, when it became evident that the property covered by said trust deed or mortgage
339 would be sold to pay said bonds secured thereby, set up a claim to prior and exclusive right to said lands in the De-

partment of the Interior, at Washington, although about one year before that time it had joined with said other companies in maintaining, by its officers and counsel before the Secretary of the Interior, and successfully, that the location of said branch line from Saint Cloud to Saint Vincent, made under the said act of Congress of March 3, A. D. 1871, when objection had been made thereto by the Minneapolis and Saint Cloud Railroad Company, was in all respects legal and proper, and that said act of Congress of March 3, A. D. 1871, was in conformity with the legislation of the State of Minnesota, and although said act was passed at its earnest request and solicitation, and to the end that about one million acres of land within the granted and indemnity limits of the line of said Saint Paul and Pacific Railroad Company from Crow Wing to Wild Rice Lake, located as aforesaid in 1869, and being on the line or route of the Northern Pacific railroad, might be relinquished by the former company and obtained by said Northern Pacific Railroad Company under its said grant, when otherwise that quantity of lands would have been deducted therefrom, and it would have been unable to obtain the same or any part thereof; that after the passage of said act of March 3, A. D. 1871, and the said location of said branch line from Saint Cloud to Saint Vincent under it, and on or about the 18th day of January, A. D. 1873, said Northern Pacific Railroad Company obtained patents from the United States for said lands as a part of its grant, and soon thereafter denied the right of said Saint Paul and Pacific Railroad Company to the lands in said conflicting limits, which formed and was understood to be the consideration for the relinquishment of the lands so patented to said Northern Pacific Railroad Company, and it now denies the right of your orator thereto, claiming and pretending, among other things, in and by its bill of complaint hereinafter mentioned that its said grant was and is prior and paramount in respect to all of
340 said lands to the said grants of March 3, A. D. 1857, and March 3, A. D. 1865, under which the said Saint Paul and Pacific Railroad Company claimed and under which your orator now claims the same, and it is therein alleged and pretended that by the acts of Congress aforesaid the said line of road from Saint Cloud to Saint Vincent was required to be located to and through a point of intersection of the tenth standard parallel with the fourth guide meridian, and that the said branch road so constructed and completed from Saint Cloud via Glyndon to Saint Vincent was not in fact built on the location made under said act of Congress of March 3, A. D. 1871; whereas, in truth and in fact, all its said pretenses are unfounded and untrue and were denied in and by the answer hereinafter mentioned to such bill of complaint.

And your orator further shows unto your honors that the said act of Congress of March 3, A. D. 1871, was and is in conformity with the legislation of the State of Minnesota; that the said Minneapolis and Saint Cloud Railroad Company never built or located any line or part of line of railroad or branch mentioned or provided for in any or either of said acts of Congress, and the said intersection of the tenth standard parallel with the fourth guide meridian was

never made a point in the line of location of said land-grant road or either of its branches and no road has ever been located on or near the same.

And your orator further shows unto your honors that, upon the contest so originated in respect to the said lands in said conflicting limits, the Secretary of the Interior, on the 13th day of May, A. D. 1873, after a full consideration of the premises, decided that the claim of the Northern Pacific Railroad Company thereto was unfounded, and that the said Saint Paul and Pacific Railroad Company had priority of right and was well entitled to the same; that pursuant to said decision there was certified and patented, on the 14th day of January, A. D. 1875, to the State of Minnesota for the use and benefit of the Saint Paul and Pacific Railroad Company, its successors and
341 assigns, a large quantity of lands within said conflicting limits, a particular description of which is contained in "Schedule of lands, Exhibit A," annexed to the original complaint hereinafter mentioned and to which your orator refers for greater certainty; that the portion of said branch road along and coterminous with said lands having been fully completed by said Saint Paul and Pacific Railroad Company, such lands were by the Governor of said State, on the 22d day of February, A. D. 1877, duly, rightfully, and fairly conveyed, subsequent to the filing of the bill of complaint hereinafter mentioned, to said Saint Paul and Pacific Railroad Company, whereby the legal and equitable title thereto became and was vested in said company and has since been conveyed to and vested in your orator as aforesaid.

Decision of Secretary of Interior and deed to St. Paul & P. R. R. Co.

And your orator further shows unto your honors that before it acquired its title to the aforesaid property and premises so purchased at said master's sale and conveyed to it as aforesaid, and on the 21st day of June, A. D. 1875, the said Northern Pacific Railroad Company filed in this court its certain bill of complaint against the Saint Paul and Pacific Railroad Company, Horace Thompson, George L. Becker, and William G. Moorhead, trustees, Hon. Geo. P. Wilson, attorney general of the State of Minnesota, and Jesse P. Farley, receiver, in an action removed to this court from the district court of Clay county, Minnesota, setting up the grant so made by Congress to that company, as aforesaid, and the survey of its general route and the definite location of its line of railroad through the State of Minnesota and the building and completion of the same, and alleging that said lands described in said schedule hereinbefore referred to and annexed to said original complaint in said suit had been patented and certified to the State of Minnesota for the use and benefit of the said Saint Paul and Pacific Railroad Company, and setting up its various claims and pretences hereinbefore referred to to show that said Saint Paul and Pacific Railroad Company was not
342 lawfully entitled to said lands, and that in equity the same belonged to the said Northern Pacific Railroad Company, and ought to be adjudged or conveyed to it as a part of the lands granted to it by said act of Congress of July 2, A. D. 1864, and the said act

The original bill and proceedings thereon.

amendatory thereof, and praying that the said defendants named in said bill might answer the same without oath, and that the said lands described in said schedule thereto annexed and every part thereof be determined, adjudged, and decreed to be the lands of and belonging to the said Northern Pacific Railroad Company, and that it was equitably entitled to the legal title thereto; that said defendants or any or either of them were not equitably or legally entitled to said lands or any part thereof or any interest therein; that the legal title to said land was held in trust for said company; that the defendants and each and every one of them should be ordered, adjudged, and decreed to make, execute, and deliver or cause to be made, executed, and delivered to said company such good and sufficient, necessary and proper, deed and deeds, instrument and instruments, as should be ordered by the court conveying, assuring, and releasing to it the full and perfect legal title to said lands in fee simple absolute, free and clear from all and every lien, encumbrance, charge, act, or thing made, done, caused, suffered, or permitted by said defendants or any of them by any person or persons, body or bodies politic or corporate, or otherwise claiming under, through, or by the said defendants or any of them, whereby the said claim, right, or interest of said company could be impaired, and that until the execution and delivery of such instrument and instruments the judgment and decree of the court in the premises should stand and operate as such conveyance, release, assurance, and confirmation.

And your orator further shows unto your honors that afterwards and before the filing of the answer herein mentioned Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall having been substituted as trustees in said trust deed or mortgage hereinbe-
343 fore mentioned in the place of said Horace Thompson, George L. Becker, and Wm. G. Moorhead, they were, on their petition for that purpose, duly substituted in their stead as defendants to said bill, and on or about the 10th day of August, A. D. 1875, they, with the said defendant, Jesse P. Farley, receiver, filed their joint and several answer thereto, and the said complainant in said bill filed its replication to said answer on the 4th day of October, A. D. 1875; that said bill and answer set forth in substance portions of the several acts of Congress and of the Legislature of the State of Minnesota hereinbefore mentioned, and which acts are more fully and completely set forth in this your orator's bill; that the said other defendants thereto failed to answer said bill, and the same was taken as confessed as against them, and subsequently, on the 26th day of June, A. D. 1878, a written stipulation between the complainant and the defendants therein, who had answered thereto as aforesaid, but to which the Saint Paul and Pacific Railroad Company was not a party, was filed in said cause, to the effect that the lands described in said original bill and schedule had been since the commencement of that suit conveyed by the State of Minnesota to the defendant, The Saint Paul and Pacific Railroad Company, by a deed executed by the Governor under the great seal of the State, and that the legal title to said lands was then in the said Saint Paul and Pacific Railroad Company, and that said suit should proceed to hear-

ing and decree in like manner and with the same effect as if said alienation had been made before the commencement of said suit and had been set forth and alleged in the bill, or as if the same had been set forth and alleged in a supplemental bill and admitted by answer thereto; and thereupon, on the day and year last aforesaid, upon said stipulation an order was entered that the said suit should proceed accordingly, and said suit was thereby dismissed as to the Hon. Geo. P. Wilson, attorney general of the State of Minnesota; that the State of Minnesota did not nor did its attorney general at any time ever appear in said suit or take any part therein, although the said bill of complaint had been taken as
344 confessed by and against said attorney general (as well as the said Saint Paul and Pacific Railroad Company) on the 24th day of December, A. D. 1875, who, it is alleged in said bill, was made a party thereto as the legal representative of said State, that thereby the State of Minnesota and the Governor thereof might have notice of the pendency of said suit and be bound by the order and decree of the court therein; that proofs were taken by and on behalf of the complainant and of said defendants who had answered before your orator had acquired its said interest in the subject-matter of litigation in said cause; that on or about the 13th day of June, A. D. 1878, before your orator so purchased said premises at said master's sale, an order was made upon stipulation in said suit by which, in substance, Edward Sawyer, of the city of Saint Paul, in said district, was appointed a special commissioner of said court to offer for sale and to sell the lands described in and claimed by said original bill of complaint, or so much thereof as he should be able to sell, subject to the orders of the court, and to continue making such sales until the final decree of the court, and, in case of an appeal, until the final decree in said suit should be made by the Supreme Court of the United States; the proceeds of sales, whether money, evidences of money, or other securities, with the interest accrued and collected thereon, to be subject to the said final decree, which was to operate thereon as if the same were the lands from the sales whereof they might arise or proceed; and your orator states, upon information and belief, that said commissioner has sold and converted a very considerable portion of said lands and to the amount of over one million dollars into moneys, securities, etc., and that the same are now held subject to the order and decree of this honorable court; that, said cause not having been heard and remaining undetermined, your orator filed its petition therein, setting forth in substance the title so acquired to said land and property by your orator as aforesaid, and that said Jesse P. Farley, as is the
345 fact, had been discharged from his trust as such receiver, and that lands within the place limits of the said grant for the said Saint Vincent Extension Branch road from Saint Cloud to Saint Vincent had been patented to the said Northern Pacific Railroad Company, as hereinafter stated, and to which your orator was and is well entitled by reason of the premises, and praying that an order be made in said cause making your orator a party defendant to said suit, with leave to answer said bill of complaint and to file

such cross-bill against said complainant therein, The Northern Pacific Railroad Company, in respect to the lands so patented to it as aforesaid by the United States, as your orator should be advised to be proper and necessary, without prejudice to the proceedings already taken therein, but with leave to each party to take such further proofs as it should be advised are material, and that the bill of complaint therein might be dismissed as to the defendant, Jesse P. Farley, as receiver, and that your petitioner might have such further or such other order or relief in the premises as should be agreeable to equity; and after the hearing of said petition, and on the third day of May, A. D. 1884, it was thereupon ordered by the court that your orator have leave to become a party to said suit by supplemental bill for the protection of its rights and interests involved in said suit; such bill to be filed on or before the third day of June, 1884, and such further proceedings be had on the bill exhibited as should be in accordance with equity, and that the prayer of your orator to become a party defendant to said suit, with leave to answer and to have said bill dismissed as to Jesse P. Farley, receiver, be denied.

Lands patented to and selected by the Northern Pacific R. R. Co.

And your orator further shows unto your honors that before the filing of said original bill, and on or about the 18th day of January, A. D. 1873, the said Northern Pacific Railroad Company, on account of the completion of its line of road through said State of Minnesota, applied for a patent for the lands to which it claimed to be en-
346 titled on account thereof under the said act of Congress of July 2, A. D. 1864, and the act amendatory thereof, and it wrongfully included in its said list and pretended to have earned and to be entitled to the lands described in Exhibit A, annexed to this your orator's bill of complaint, as a part of the lands so granted to and earned by it as aforesaid, which said lands amount to twenty-nine thousand seven hundred and eighty-two acres or thereabout, and are all situated within ten miles of the line of definite location of said branch road from Saint Cloud to Saint Vincent via Glyndon, and are situated within said grant and form a part of the lands granted to said State to aid in building said branch road, and were earned long since by the construction and completion of said branch road, according to said acts of Congress and legislation of the State of Minnesota hereinbefore set forth, by the said Saint Paul and Pacific Railroad Company, and to which it became and was and your orator now is well entitled, and the legal title to which ought to be conveyed to your orator as such purchaser thereof at said master's sale as aforesaid; that the said lands last mentioned were wrongfully and inadvertently included in a patent for a large quantity of other lands conveyed by the United States to said Northern Pacific Railroad Company by a patent to said company dated on said 18th day of January, A. D. 1873, and which constitutes a cloud upon the title of your orator to said lands, which ought in equity and good conscience to be canceled and to that extent set aside; that said lands are of the value of two hundred thousand dollars, and the said Northern Pacific Railroad Company, by virtue of said patent so

wrongfully and inadvertently issued as to said lands, now claims and pretends to be well entitled in the law, and denies that your orator has any right, title, or interest therein or thereto whatever; that said lands are referred to in said original bill, where it is mentioned, in substance, that the Secretary of the Interior declined to direct proceedings to be instituted to cancel said patent as to said lands, stating that the parties should be left to the remedies
347 to be afforded by the courts, and are mentioned in said bill as lands "previously conveyed to the said complainant," and in said answer thereto as lands previously wrongfully conveyed to said Northern Pacific Railroad Company.

And your orator further shows unto your honors that it will require all the lands in the odd-numbered sections within the indemnity limits of the said grant of March 3, A. D. 1857, as amended by the act of Congress of March 3, A. D. 1865, opposite to and along said branch to Saint Vincent, in addition to the lands in the odd-numbered sections within the place limits now subject to said grant, to satisfy the same and make ten sections per mile for each mile of said branch road; that the said Northern Pacific Railroad Company claims to be entitled to priority of right in said indemnity limits, and is endeavoring to obtain patents for all the lands on the odd-numbered sections within the geographical place and indemnity limits of its said grant; that said Northern Pacific Railroad Company has selected a list of lands in odd-numbered sections within the granted or place limits of the said grant under which your orator claims and which your orator has also selected, amounting to about thirty-four thousand nine hundred and thirty-five acres of land, and has filed the same in the Department of the Interior at Washington, and is now endeavoring to obtain patents thereon by reason of its said grant and the completion of its said road; that a list of said lands is hereunto annexed and marked "Exhibit B," and to which your orator begs leave to refer.

And your orator further shows unto your honors that all lands belonging to the United States in odd-numbered sections within the place and indemnity limits of the grant to said Northern Pacific Railroad Company as amended as aforesaid at the time the location of its road was definitely fixed as aforesaid and within the route of the road at one time projected from Saint Cloud to a point on Lake Superior, as specified in the act of Congress of March 3, A. D. 1865, and which were released by the said Saint Paul and Pacific
348 Railroad Company under the provisions of said act of Congress of March 3, A. D. 1871, since the change of the route and line of said branch road from Saint Cloud to Saint Vincent under said act as aforesaid were patented to and received by the said Northern Pacific Railroad Company and as a part of its said grant on or about the 8th day — January, A. D. 1873.

To the end, therefore, that the said defendant, The Northern Pacific Railroad Company, may, if it can, show why your orator should not have the relief hereby prayed, and that it may true, full, and perfect answer make to all and singular the matters and things hereinbefore stated and charged as fully and particularly as if the

same were hereinafter repeated and it thereunto distinctly interrogated, according to the best of its knowledge, information, and belief, but not on the oath of any of its officers or other person, the necessity of the answer of the said defendant being put in under oath being hereby expressly waived, and that the said acts of Congress and of the Legislature of the State of Minnesota may be construed by this honorable court, and that the rights of the parties to this cause in and to the lands in the odd-numbered sections within the said conflicting limits of their respective grants at and near Glyndon, at the crossing of the lines of their said railroads, and to all moneys, funds, or other property derived therefrom in any way or manner, may be determined and settled, and that the rights and interests of your orator as such purchaser at said master's sale during the pendency of said original suit, as hereinbefore set forth, may be protected and enforced, and to that end that it may have the benefit of all and singular the matters hereinbefore stated by way of defense to said original bill, and that it may have the benefit of the proceedings in said suit hereinbefore mentioned, and that it may have the same relief therein as if the matters and things hereinbefore stated had been set up therein by original answer and cross-bill thereto, and that this bill proceed with said suit to
349 a decree, and that it may be adjudged and decreed to be well entitled both at law and in equity to have and hold all and singular said lands and premises so conveyed to it by the State of Minnesota and all and singular the moneys, proceeds, and property derived therefrom, free and clear of any claim thereto or to any part thereof of the said Northern Pacific Railroad Company, and that its said claim may be declared wholly unfounded, illegal, and of no effect; that said moneys, proceeds, and property may be decreed to and delivered to your orator, and that the patent hereinbefore mentioned, issued by the United States to said defendant, for the lands described in Exhibit A, annexed to this your orator's bill of complaint, may be declared inoperative and void as against your orator's title and claim of title in and to the said lands and each and every part thereof, and that it may be perpetually enjoined by the decree of this honorable court from in any way or manner putting the same in use, force, or effect, and that it may in like manner be perpetually enjoined from setting up in any way or manner any claim or demand to any lands within the said conflicting limits to any of the odd-numbered sections or parts thereof, whether within the place or indemnity limits within said conflicting limits, and that should it be found that said defendant has sold and conveyed any of said lands so patented to it within said conflicting limits to any *bona fide* purchaser or purchasers for value that in such case it be decreed to account for and be charged with the value thereof, and that your orator may have such further or other relief in the premises as the nature of the case may require and as to this honorable court may seem meet—

May it please your honors to grant unto your orator the writ of subpœna of the United States of America, to be issued out of and under the seal of this honorable court and directed to the said

Northern Pacific Railroad Company, commanding it, on a day certain therein to be named and under a certain penalty, to be
350 and appear in this honorable court, then and there to answer all and singular the premises charged in this your orator's bill in the nature of a supplemental or cross-bill, and to stand to, perform, and abide such order, direction, and decree as may be rendered against it; and your orator, as in duty bound, will ever pray, etc.

R. B. GALUSHA,
Solicitor for Complainant.

GEO. B. YOUNG,
H. R. BIGELOW,
S. U. PINNEY,
Of Counsel.

351 EXHIBIT A.

Lands patented to Northern Pacific Railroad Company January 18, 1873, within the ten-mile limits Saint Vincent Extension, and twenty-mile limits of Northern Pacific railroad.

Part of section.	Sect'n.	Town.	Range.	Acres.
All of	1	139	48	638.24
All of	3	139	48	631.41
E ½ n e ¼	5	139	48	76
All of	11	139	48	640
S ½	13	139	48	320
N ½	15	139	48	320
N e ¼	5	140	48	144.95
S e ¼ s w ¼	7	140	48	40
All of	9	140	48	640
W ½	11	140	48	320
All of	15	140	48	640
W ½	23	140	48	320
W ½	25	140	48	320
E ½	27	140	48	320
E ½ n w ¼ & e ½ s w ¼	27	140	48	160
Lots 2, 3, 4, and 5	29	140	48	155.16
All of	35	140	48	640
All of	3	139	47	632.96
All of	7	139	47	616.17
All of	11	139	47	640
W ½	13	139	47	320
All of	15	139	47	640
W ½	17	139	47	320
All of	19	139	47	621.05
N ½	23	139	47	320
All of	25	139	47	640
All of	27	139	47	640
W ½	29	139	47	320

Exhibit A—Continued.

Part of section.	Sect'n.	Town.	Range.	Acres.
All of	31	139	47	630
352 All of	35	139	47	640
All of	1	140	47	610.13
All of	3	140	47	598.77
All of	5	140	47	615.30
All of	7	140	47	618.34
All of	9	140	47	640
All of	11	140	47	640
All of	13	140	47	640
All of	15	140	47	640
All of	17	140	47	640
All of	19	140	47	618.88
All of	21	140	47	640
All of	23	140	47	640
All of	25	140	47	640
All of	27	140	47	640
W ½ n e ¼, n w ¼ and s ½	29	140	47	560
All of	31	140	47	618.05
S ½ n e ¼, s ½ n w ¼, and s ½	33	140	47	560
All of	35	140	47	640
S ½ n e ¼, s ½ n w ¼, and s ½	19	141	47	477.09
S ½ n e ¼, s ½ n w ¼, s ½	21	141	47	480
S ½ n e ¼, s ½ n w ¼, and s ½	23	141	47	480
All of	25	141	47	640
All of	27	141	47	640
All of	29	141	47	640
All of	31	141	47	640
All of	33	141	47	640
All of	35	141	47	640
Total				29,782.50

353 EXHIBIT B.

List of lands selected by the Northern Pacific Railroad Company within the ten-mile limits of Saint Vincent Extension and within twenty miles of Northern Pacific railroad, and upon which patents are applied for by the Northern Pacific Railroad Company.

Part of section.	Sect'n.	Town.	Range.	Acres.
S ½ s w ¼	17	138	44	80
E ½ n e ¼, s w ¼ n e ¼, s e ¼, e ½ s w ¼, s w ¼ s w ¼	19	138	44	399
All of	29	138	44	640
E ½ n e ¼, s w ¼ n e ¼, s e ¼, s e ¼ s w ¼, and w ½ n w ¼	31	138	44	397.43
W ½	33	138	44	320

Exhibit B—Continued.

	Part of section.	Sect'n.	Town.	Range.	Acres.
	W ½ n e ¼, n w ¼, n ½ s w ¼, s w ¼ s w ¼	1	137	45	357.84
	All of	3	137	45	632.63
	All of	5	137	45	637.98
	All of	7	137	45	446.81
	All of	9	137	45	640
	All of	11	137	45	640
	W ½ n w ¼, s w ¼	13	137	45	240
	All of	15	137	45	640
	All of	17	137	45	640
	All of	19	137	45	459.69
	All of	21	137	45	640
	All of	23	137	45	640
	All of	25	137	45	640
	S e ¼ n e ¼, w ½ n e ¼, s e ¼, and w ½	27	138	45	600
	All of	29	137	45	640
	All of	31	137	45	475.25
	All of	33	137	45	640
	All of	35	137	45	640
354	All of	25	138	45	640
	All of	27	138	45	640
	S ½	29	138	45	320
	All of	31	138	45	428.48
	All	33	138	45	640
	All	35	138	45	640
	All	1	137	46	637.44
	S e ¼ n e ¼ and lots 1, 2, 3, and 4	3	137	46	198.33
	All of	5	137	46	640.61
	All of	7	137	46	644.33
	N ½ n e ¼, s e ¼, w ½	9	137	46	560
	All of	13	137	46	640
	All of	15	137	46	640
	All of	17	137	46	640
	All of	19	137	46	643.21
	N w ¼	21	137	46	160
	E ½ n e ¼, n w ¼ n e ¼, e ½ s e ¼	23	137	46	200
	All of	25	137	46	640
	S e ¼ n e ¼ and s ½	27	137	46	360
	N e ¼ n e ¼, n e ¼ n w ¼, n e ¼ s e ¼, s ½ s e ¼, and s ½ s w ¼	29	137	46	280
	All of	31	137	46	642.23
	All of	33	137	46	640
	All of	35	137	46	640
	All of	1	137	47	639.79
	All of	3	127	47	642.33
	All of	5	137	47	643.60
	All of	7	137	47	639.61

Exhibit B—Continued.

Part of section.	Sect'n.	Town.	Range.	Acres.
All of	9	137	47	640
All of	11	137	47	640
All of	13	137	47	640
All of	15	137	47	640
All of	17	137	47	640
E ½ and n w ¼	19	137	47	482.11
All of	21	137	47	640
355 All of	23	137	47	640
All of	25	137	47	640
All of	27	137	47	640
All of	29	137	47	640
All of	33	137	47	640
All of	35	137	47	640
Lot 5	1	141	49	6.61
				34,935.31

356 And on the same day, to wit, the 28th day of May, 1884, a chancery subpœna was issued out of this court in the words and figures following, viz:

Chancery Subpœna.

357 UNITED STATES OF AMERICA, }
District of Minnesota. }

The President of the United States of America to the Northern Pacific Railroad Company, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of July next, at the city of St. Paul, then and there to answer the supplemental bill of complaint of the Saint Paul, Minneapolis and Manitoba
358 Railway Co., a citizen of the State of Minnesota, filed against you on the 28th day of May, A. D. 1884; hence fail not.

Witness the Honorable Morrison R. Waite, Chief Jus-
[SEAL.] tice of the Supreme Court of the United States, the 28th day of May, 1884.

Issued at my office, in the city of Saint Paul, under the seal of the circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk.*

MEMORANDUM.—The above-named defendant to enter its
359 appearance in this suit, in the clerk's office aforesaid, on or

before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

OSCAR B. HILLIS, *Clerk*.

R. B. CALUSHA,
Complainant's Solicitor.

Filed May 29th, 1884.

OSCAR B. HILLIS, *Clerk*.

360 To which said chancery subpœna the marshal attached his return of service, which is in the words and figures following, to wit:

Return of Service.

361 UNITED STATES OF AMERICA, }
District of Minnesota, } *ss*:

I hereby certify that I have served the annexed chancery subpœna on the herein-named defendant, The Northern Pacific Railroad Company, personally by handing to and leaving with T. F. Oakes, general manager of said Co., a true copy thereof, at St. Paul, in said district, on the 2nd day of June, 1884.

W. R. DENNY,
U. S. Marshal,
By CHAS. REICHOW, *Deputy*.

362 UNITED STATES OF AMERICA, }
District of Minnesota, } *ss*:

I hereby certify that I served the annexed chancery subpœna on the herein-named defendant, The N. P. Railroad Company, personally by handing to and leaving with W. P. Clough, solicitor for said R. R., *to* St. Paul, in said district, on the 28th day of May, 1884.

Marshal fee, &c., $2.32.

H. R. DENNY,
U. S. Marshal,
By HENRY MORRIS, *Deputy*.

363 And afterwards, to wit, on the 18th day of August, A. D. 1884, the answer of the defendant to the supplemental bill of complainant was filed in the words and figures following, viz:

Answer of Defendant.

364 Circuit Court of the United States for the District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY }
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY. }

Answer of the Defendant to the Supplemental Bill of the Plaintiff.

W. P. Clough, solicitor for defendant; Geo. Gray, of counsel.

Filed Aug. 18th, 1884.

OSCAR B. HILLIS, *Clerk*.

365 In the Circuit Court of the United States for the District of Minnesota.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Plaintiff,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Answer of the Defendant to the Supplemental Bill of the Plaintiff.

This defendant, now at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said supplemental bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, answering, saith:

366 This defendant admits that on March 3, A. D. 1857, Congress passed an act entitled as alleged in the supplemental bill, in folios four and five, making a grant of lands to the Territory of Minnesota, substantially as alleged in the said supplemental bill, in folios from five to fourteen, inclusive.

And this defendant further admits that on May 22, A. D. 1857, the Legislature of the Territory of Minnesota passed an act entitled as alleged in the said supplemental bill, in folio fourteen thereof, making grants and containing provisions substantially as alleged in the bill of complaint, in folios from fifteen to twenty, inclusive, and that after the passage of the said act and on or about the date alleged in the complaint, in folio twenty-one, the said Minnesota & Pacific Railroad Company was duly organized, and thereupon accepted the provisions of the said act.

And this defendant further admits that after the organization of the said Minnesota & Pacific Railroad Company it commenced the survey, location, and construction of the main and branch line of railroad which it was authorized by the said act of Legislature to build and operate, and located the said main line from the eastern terminus thereof to the western terminus thereof, and filed a map of such location, together with resolutions adopting the same, in the office of the Governor of the said Territory; that shortly afterward such location was approved by the Secretary of the Interior, and the map thereof filed in the General Land Office at Washington; that the said Minnesota & Pacific Railroad Company thereafter constructed and completed, ready for placing the superstructure thereon, the road-bed of a portion of its said railroad and received from the State of Minnesota certain State railroad bonds, as alleged in the said supplemental bill, and that thereafter proceedings were had by and on the part of the State of Minnesota substantially as alleged in the said supplemental bill, in folios from twenty-four to twenty-seven, inclusive, whereby there were granted, conveyed, and assigned to the State of Minnesota all right and equity of redemption of the said Minnesota & Pacific Railroad Company in and to

all the property, rights, franchises, and privileges theretofore owned and held by the said Minnesota & Pacific Railroad Company.

And this defendant further admits that prior to the first day of October, A. D. 1857, the said Minnesota & Pacific Railroad
367 Company had definitely located all that part of the said branch line of railroad extending from St. Anthony to Crow Wing, and shortly after the making of such definite location filed a map thereof with the Governor of the Territory of Minnesota and with the Secretary of the Interior at Washington.

And this defendant further admits that on March 10, A. D. 1862, the Legislature of the State of Minnesota passed an act entitled as alleged in the supplemental bill, in folio twenty-nine thereof, making grants and containing provisions, substantially as alleged in the said supplemental bill, in folios from twenty-nine to thirty-two, inclusive.

Joint resolution of Congress of July 12, 1862.

And this defendant further admits and it avers that Congress passed a joint resolution approved July 12, A. D. 1862, relating to the said branch line of railroad, but it avers that the said joint resolution was of the tenor following and not otherwise—that is to say:

"Whereas, by an act of Congress approved March third, eighteen hundred and fifty-seven, there was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater via St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, the northern terminus of which was fixed by the Legislature of said Territory at St. Vincent; and whereas it is now believed that the public interests require a change of location in a part of said branch road: Therefore be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in lieu of that part of the railroad grant to Minnesota Territory by act of Congress approved third March, eighteen hundred and fifty-seven, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided this resolution shall take effect from the filing in the General Land Office of the acceptance by the authorities aforesaid of such substitution, where-
368 upon the land north of the intersection aforesaid in the grant, as authorized by the said act of third March, eighteen hundred and fifty-seven, being by said acceptance disencumbered of the railroad grant, shall be dealt with as other public lands of the United States."

Act of Legislature of March 6, 1863, accepting joint resolution.

And this defendant further admits and it avers that after the passage of the said joint resolution of Congress the Legislature of the State of Minnesota duly passed an act approved March 6, A. D. 1863, entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," in and by which act, among other things, the authorities of the State of Minnesota duly assented to and accepted all and singular the provisions of the said joint resolution, and authorized and empowered the said St. Paul and Pacific Railroad Company to survey, locate, construct, maintain, and operate, in conformity with the said joint resolution of Congress, within the State of Minnesota, a new branch railroad, having its southwestern terminus at or above some point opposite the town of Saint Cloud, upon the branch railroad first hereinbefore mentioned, and extending from thence in a northeasterly direction, by such route as the St. Paul and Pacific Railroad Company might select, to the navigable waters of Lake Superior at or near the mouth of Pigeon river by way of Duluth, and that the St. Paul and Pacific Railroad Company should be entitled to have, receive, and hold all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by the said joint resolution of Congress, and that if the said St. Paul and Pacific Railroad Company should not within two years from the eighth day of March, A. D. 1863, construct and equip for business at least twenty miles of said new branch road, and also grade and prepare for the laying of the iron at least twenty miles of the said new branch within the State of Minnesota, from the navigable waters on Lake Superior in the direction of the southwestern terminus thereof, and should not within five years from the passage of the said act complete said new branch from the Mississippi river to the navigable waters of Lake Superior, in the State of Minnesota, then and in such case all the rights, franchises, lands, property, interests, and immunities by such act granted
369 pertaining to the unfinished portions of said new branch road should be forfeited to the State of Minnesota and should not inure in any way to the said St. Paul and Pacific Railroad Company, but should be forfeited to and retained by the State of Minnesota for further disposition, to which act, for greater certainty in respect to the provisions thereof, the defendant refers.

Filing of acceptance by State of joint resolution in Gen. L'd Office.

And this defendant further admits and it avers that after the passage of the said last-mentioned act of Legislature a true copy thereof, duly authenticated under the great seal of the State of Minnesota, was duly filed by the Governor of said State in the General Land Office at Washington on February 26, A. D. 1864.

And this defendant further admits that at the time of the passage of the said joint resolution of Congress and of the said act of the Legislature of the State of Minnesota the said St. Paul and Pacific Railroad Company had not made any location northward from Crow Wing of its said branch railroad extending from St. Anthony to St. Vincent; and that at the time of the passage of the said joint resolution the surveys of the public lands of the

United States had not been fully completed up to the point of the intersection of the tenth standard parallel with the fourth guide meridian, which is at the northwest corner of township numbered 140, of range numbered 31, of the United States Government survey; but this defendant avers that the said intersection became and was made a point upon the line of the said branch railroad extending from St. Anthony to St. Vincent, and of the said grant of lands made by Congress in aid of the construction thereof by virtue of the said joint resolution of Congress and the acceptance thereof by the authorities of the State of Minnesota as aforesaid, and thereafter remained a point upon the line of the said branch railroad and of the said land grant in aid of the construction thereof until the passage by Congress of that certain act, approved March 3, A. D. 1871, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," hereinafter particularly referred to.

Intersection of 10th stand. parallel with 4th guide meridian made a point on the line of the road.

And this defendant further admits that by an act of the said Legislature, approved February 6, A. D. 1864, it was pro-
370 vided, among other things, that the St. Paul and Pacific Railroad Company should have the right to relocate the said branch line extending from St. Anthony to St. Vincent, so that the same should run via St. Cloud instead of via Crow Wing, and terminate at any point on the international boundary line, near the Red River of the North; but this defendant denies that any change in the policy of the State of Minnesota including an abandonment of the said new branch line extending from the Mississippi river to the waters of Lake Superior has ever occurred at any time; or, if at any time, not until a period long after this defendant had definitely located and completed all that part of its railroad extending from Northern Pacific Junction, in the county of Carlton, in the State of Minnesota, westward, entirely across the said State and into the Territory of Dakota; but, on the contrary, this defendant avers that by an act of the said Legislature, approved March 4, A. D. 1864, entitled "An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company," it was enacted and provided that the said St. Paul and Pacific Railroad Company should have one year, in addition to the times respectively mentioned and prescribed in the act entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," wherein to construct, grade, and equip the said branch road and the several portions thereof specified in such act, provided that the said company should within eight months from the passage of such act accept the terms and provisions of the said act of March 6, 1863, and of the joint resolution of the Congress of the United States, approved July 12, A. D. 1862, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State and for other purposes," or that such act should be void and of no effect; that

Legislation of Minn. relating to Lake Superior Branch of St. P. & P. R. R.

by a certain subsequent act of the same Legislature, approved March 2, A. D. 1867, it was provided that if twenty miles of the said new branch road extending from a point at or above St. Cloud to Lake Superior should not have been put into operation, with the cars running thereon, by the second day of March, A. D. 1870, the lands pertaining thereto should revert and be passed over to the
371 Minneapolis and St. Cloud Railroad Company; that by a subsequent act of the said Legislature, approved March 7, A. D. 1870, entitled "An act declaring a forfeiture of lands under an act entitled 'An act to amend the charter of the St. Paul and Pacific Railroad Company, approved March second, one thousand eight hundred and sixty-seven,'" it was enacted and provided in words following—that is to say:

Forfeiture of lands granted to St. P. & P. R. R. Co. to aid Lake Sup. Branch, and re-grant of same to Minneapolis and St. Cloud R. R. Co.

"That whereas by a proviso contained in section two of chapter one of the special laws of one thousand eight hundred and sixty-seven of an act entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved March second, one thousand eight hundred and sixty-seven, it was declared that if twenty miles of the road of the said company extending from Lake Superior to a point at or above St. Cloud shall not have been put into operation, with the cars running thereon, by the second day of March, eighteen hundred and seventy, the lands appertaining thereto should revert and be passed over to the Minneapolis and St. Cloud Railroad Company; and whereas the company first above named has failed to put into operation, with the cars running thereon, the twenty miles of said road therein provided for and required to be built, and has in no manner complied with the provisions of the said act or of the said proviso therein contained: Therefore be it enacted by the Legislature of the State of Minnesota, That the lands appertaining to said road extending from Lake Superior to a point at or above St. Cloud by reason of any grant made by the Congress of the United States or of any law of this State, or both, are hereby declared to be forfeited and lost to the said The St. Paul and Pacific Railroad Company, and the said lands are hereby granted to the said Minneapolis and St. Cloud Railroad Company to aid in the construction of their branch road extending from St. Cloud in the direction of Lake Superior under the provisions of the charter of said last-named company." That at the time of and before the passage of the said several acts the said Minneapolis and St. Cloud Railroad Company in the said acts mentioned was and it has ever since remained a railroad corporation organized and existing under that certain act of the Legislature of the Territory of Minnesota, approved March 1, A. D. 1856, entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company," and having full power and authority to construct, maintain, and operate the said
372 branch line of railroad contemplated by the said several acts, and to receive, hold, and enjoy the said land grant made in aid of the construction thereof; that prior to the passage of the said act approved March 7, A. D. 1870, the said St. Paul and Pacific Rail-

Act incorporating Minneapolis and St. Cloud R. R. Co.

road Company had never located nor constructed any portion of the said new branch line of railroad in the said act referred to, by means whereof the said Legislature at and before the time of the passage of the said last-mentioned act had become and was fully authorized and empowered to pass the said act and to resume the said land grant and to transfer the same to the said Minneapolis and St. Cloud Railroad Company, as in and by the said act it purported to do.

And this defendant further avers that after the passage of the said joint resolution of Congress and of the said act of the Legislature of Minnesota approved March 6, A. D. 1863, to wit, on May 28, A. D. 1864, the said St. Paul and Pacific Railroad Company duly accepted and assented to all and singular the terms, conditions, and provisions of the said joint resolution of Congress and of the said last-mentioned act of Legislature, by means whereof the said joint resolution and the said several acts of the Legislature of the State of Minnesota relating to the land grant in the said joint resolution mentioned became valid and binding upon the said St. Paul and Pacific Railroad Company and upon its successors and assigns to all intents and purposes; that shortly after the passage of the said act of March 7, 1870, and in the same year, but at what precise date this defendant is ignorant, the said Minneapolis and St. Cloud Railroad Company duly accepted all and singular the terms, conditions, and provisions of that act, whereby it became fully vested with all the rights, both in law and in equity, in and to the said land grant which has been conferred upon the State of Minnesota by the said joint resolutions of Congress relating thereto, and has ever since remained the owner thereof.

Acceptance by St. P. & P. R. R. Co. of joint resolution of Congress of July 12, 1862.

Acceptance by Minneapolis and St. Cloud R. R. Co. of grant by Minn. Leg. of the forfeited lands.

And this defendant further admits that special stock was issued by the said St. Paul and Pacific Railroad Company, as alleged in the said supplemental bill in folios forty-seven and forty-eight, and that thereafter such proceedings were had that the First Division of the St. Paul and Pacific Railroad Company was organized and
373 brought into existence as a railroad corporation invested with the rights, property, and franchises mentioned in the said supplemental bill in folios forty-eight and forty-nine.

And this defendant further admits that the Legislature of the State of Minnesota passed an act, approved March 2, A. D. 1865, entitled as alleged in the said supplemental bill, in folio fifty, containing provisions substantially the same as alleged in the said supplemental bill, in folios from fifty to fifty-two, inclusive.

And this defendant further admits that Congress passed an act approved March 3, A. D. 1865, and entitled as alleged in the said supplemental bill, in folio fifty-four, and that the said act contained provisions substantially the same as alleged in the said supplemental bill, in folios from fifty-four to sixty-five, inclusive, and that at the time of the passage of the said act of Congress no part of the said main line of said railroad westward from Minneapolis had been constructed.

And this defendant further admits that after the organization of the said First Division of the St. Paul and Pacific Railroad Company and prior to the twenty-fifth day of October, A. D. 1871, it, the said First Division of the St. Paul and Pacific Railroad Company, had constructed and completed to the satisfaction of the State of Minnesota and of the United States the whole of the said main line from Minneapolis to Breckenridge and all that part of the said branch line owned and controlled by it as far northward as Sauk Rapids, in the county of Benton, being a point about four miles southward from Watab, where the property of the said First Division of the St. Paul and Pacific Railroad Company in the said branch line ceased, and that such proceedings were had that the rights of the said First Division of the St. Paul and Pacific Railroad Company, as well as those of the St. Paul and Pacific Railroad Company, to all that portion of the said main line of road lying between St. Paul and Stillwater were transferred to and became vested in the Stillwater and St. Paul Railroad Company.

And this defendant further admits and it avers that Congress passed an act, approved July 2, A. D. 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," and that afterwards this defendant was duly organized under and in pursuance of the said act of Congress, and that thereupon this defendant became invested with and entitled to all the rights, franchises, and property granted and intended to be granted by the said act of Congress and by the several subsequent acts and joint resolutions of Congress relating to the same subject-matter; and this defendant avers that the said act of Congress contained, among other things, the provisions following—that is to say:

Incorporation of and grant of lands to the Northern Pacific R. R. Co.

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"SEC. 3. And be it further enacted, That there be, and hereby is, granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of other lands shall be selected by said company in lieu thereof, under the direction of

the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line the amount of lands heretofore granted shall be deducted from the amount granted by this act: Provided further, that the railroad company receiving the previous grant of land may assign their interest to said 'Northern Pacific Railroad Company' or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: Provided further, that all mineral lands be, and the same are hereby, excluded from the operations of this
375 act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road may be selected as above provided: And provided further, that the word mineral, where it occurs in this act, shall not be held to include iron or coal: And provided further, that no money shall be drawn from the Treasury of the United States to aid in the construction of said 'Northern Pacific railroad.'

"SEC. 4. And be it further enacted, That whenever said 'Northern Pacific Railroad Company' shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States, and patents of lands as aforesaid shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road; and from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid, provided that not more than ten sections of land per mile, as said road shall be completed, shall be conveyed to said company for all that part of said railroad lying east of the western boundary of the State of Minnesota until the whole of said railroad shall be finished and in good running order as a first-class railroad from the place of beginning on Lake Superior to the western boundary of Minnesota; provided also that lands shall not be granted under the provisions of this act on account of any railroad or part thereof constructed at the date of the passage of this act.

"SEC. 6. And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general

route shall be fixed and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen
376–7 hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company; and the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre when offered for sale."

And this defendant further admits that after the passage of the last-mentioned act Congress passed a joint resolution, approved May 31, A. D. 1870, entitled "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," and that the said joint resolution contained the provision following—that is to say:

"And in the event of there not being in any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States and designated by odd numbers in such State or Territory, within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four."

This defendant denies that the said St. Paul and Pacific Railroad Company ever made any lawful or effectual location of its said branch line of railroad between Crow Wing and the point near the center of the tier of townships numbered one hundred and forty-two, in range numbered forty, referred to in the said supplemental bill in folio eighty-two; and this defendant denies that the said St. Paul and Pacific Railroad Company ever had authority to make any valid location of any part of the said branch line over the route referred to in the last-mentioned folio of the said supplemental bill.

378 This defendant, however, admits that in or about the year 1869 the said St. Paul and Pacific Railroad Company caused a survey to be made of a proposed route of a portion of the said branch line extending from Crow Wing to the said point mentioned in folio eighty-two of the said supplemental bill, and that

afterwards and in the same year the board of directors of the said St. Paul and Pacific Railroad Company, at a meeting thereof held on October 13 of that year, passed a resolution purporting to confirm and adopt such survey as a part of the definite location of the route of such branch railroad, and also caused a map of such proposed route to be prepared and to be presented to the Secretary of the Interior for filing in his office, and a map of definite location of the said part of the route of the said branch line, but this defendant avers that the Secretary of the Interior declined to accept or to approve such map or the said survey as a definite location of a portion of the route of said branch line for the reason that the same constituted an unauthorized departure from the general route of the said branch line, as contemplated by the several acts of Congress relating thereto, and the said survey was never approved by any competent officer of the United States as the definite location of any portion of the said branch line for the reason that the same was wholly unauthorized by any of the said acts of Congress.

Survey of 1869 never accepted by Gov't, because an unauthorized departure from route defined by act of Congress.

And this defendant further denies that the general course of the said surveyed line was substantially or to any considerable extent the same as any portion of the subsequent definitely located line of the Northern Pacific railroad, and denies that the said survey by the St. Paul and Pacific Railroad Company was ever found to be substantially upon the same route and general line for any appreciable distance whatever as those of the Northern Pacific railroad.

And this defendant further admits and it avers that on or about July 25, A. D. 1870, the Northern Pacific Railroad Company adopted a general route for its railroad, and caused to be prepared a map showing so much of such general route as extended across and through the State of Minnesota, and on or about August 15, A. D. 1870, under and in pursuance of the said several acts and joint resolutions of
379 Congress relating to the Northern Pacific railroad, duly filed the said map in the General Land Office at Washington; and this defendant further admits that after the filing of said last-mentioned map the Northern Pacific Railroad Company duly resolved and decided to alter a portion of the said general route within the State of Minnesota, and did duly alter the same, and thereupon caused to be prepared a further and additional map showing such amended route; and thereafter and on or about October 12, A. D. 1870, by authority of the said acts and joint resolutions of Congress, duly filed such additional map in the said General Land Office.

N. P. R. R. adopts general route in State of Minnesota.

And this defendant denies that the said amendment of general route was unauthorized or inoperative or void, but, on the contrary, avers that the same was fully authorized by the said acts and joint resolutions of Congress relating to the Northern Pacific railroad and was valid in every particular.

And this defendant avers that forthwith and upon the filing of the said maps of original and amended route all the odd-numbered sections of land lying within twenty miles on each side of the original and amended lines

Withdrawal of lands along gen. route of N. P. R. R.

of said general route were duly reserved from sale, pre-emption, homestead, or other disposal by or under the authority of the United States, as well by proper force of the said several acts and joint resolutions of Congress relating to the Northern Pacific railroad as by orders of the Secretary of the Interior, bearing date, respectively, on August 13, A. D. 1870, and October 12, 1870, to which orders, for greater certainty, this defendant begs leave to refer.

And this defendant further avers that all and singular the odd-numbered sections of land reserved as aforesaid remained so reserved until after the definite location by the Northern Pacific Railroad Company of its railroad through the State of Minnesota.

And this defendant further avers that the parcels of land described in Exhibits "A" and "B" of the said supplemental bill were all included in said reserved sections, except those parcels particularly described in Exhibit "A" of this answer.

And this defendant admits that in so far as it was capable in law of so doing the Northern Pacific Railroad Company, in the latter part of the year 1870, acquired the ownership of certain of the shares in the capital stock of the said St. Paul and Pacific
380 Railroad Company, and also certain other shares in the capital stock of the said First Division of the St. Paul and Pacific Railroad Company, and that thereafter changes were made in the membership of the respective boards of directors of the said two companies; but this defendant denies that the said Northern Pacific Railroad Company, by virtue of its relations to the said shares of capital stock or from any other cause or in any other mode, acquired the use of the franchises of either of the said companies, but, on the contrary, avers that the said two companies at all times remained and were organizations totally distinct from the said Northern Pacific Railroad Company.

And this defendant further admits that in the fore part of the year 1871 the said St. Paul and Pacific Railroad Company decided to apply to Congress for leave to alter the route of the said branch line of railroad as contemplated by the said several acts and joint resolutions of Congress relating thereto, so that instead of one continuous branch running to St. Vincent by way of Crow Wing the same should be divided into two separate branches, one extending from Watab northward to the Northern Pacific railroad and the other from St. Cloud to St. Vincent; but this defendant denies that the determination to apply for leave to make such changes in the said branch line was the result of any of the causes mentioned in the said supplemental bill, in folios from 91 to 94, inclusive, save these only that the public interests and those of the said St. Paul and Pacific Railroad Company would be promoted by such changes.

Act of Congress of 1871 authorizing St. P. & P. R. R. Co. to change branch line.

And this defendant further admits that after the said St. Paul and Pacific Railroad Company had arrived at the determination aforesaid it did solicit and procure the passage by Congress of the act approved March 3, 1871, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line, in consideration

of a relinquishment of land," which act was in terms following—that is to say:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the St. Paul and Pacific Railroad Company may so alter its branch lines that instead of constructing a road from Crow Wing to St. Vincent
381 and from St. Cloud to the waters of Lake Superior, it may locate and construct in lieu thereof a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines as is provided for the present lines by existing laws, provided, however, that this change shall in no manner enlarge said grant, and that this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to market without further legislation."

And this defendant admits that after the passage of the said act the said St. Paul and Pacific Railroad Company, by its board of directors, at a meeting thereof held on March 23, A. D. 1871, passed resolutions purporting to accept the said act and authorizing and directing its president and secretary to execute under the corporate seal thereof to the United States the release of lands required by the act to be executed, and to do every act and thing necessary or proper to secure to the said St. Paul and Pacific Railroad Company the benefit of the said act of Congress according to the terms thereof, and that the said St. Paul and Pacific Railroad Company should commence the surveys of the said road and locate the same to Brainerd and to a point of intersection with the Northern Pacific railroad at or near Otter Tail or Rush Lakes, and thence to St. Vincent, at the earliest possible moment, and to prepare and file in the office of the Secretary of the Interior the maps and papers necessary to retire the lands granted by Congress.

Act of Congress of March 3, 1871, not in accordance with the legislation of the State of Minnesota.

But this defendant denies that the said act of Congress approved March 3, A. D. 1871, was in accord with the legislation of the State of Minnesota, for the reason, among others, that prior to the passage of the said act the said grant of lands made as aforesaid to the State of Minnesota to aid in the construction of the said new branch running from St. Cloud to Lake Superior had been resumed
382 as aforesaid by the State of Minnesota and transferred to the said Minneapolis and St. Cloud Railroad Company, and was then owned and held by said company and thereafter continued to be owned and held by said company, so that the said St. Paul and Pacific Railroad Company, at the time of the passage of the said act, was and it has ever since remained wholly unable to execute

the release required by the said act of Congress as a condition of its taking effect, by reason whereof this defendant submits that the said act of March 3, 1871, has never taken effect, but has remained wholly inoperative, unless the act of Congress approved March 11, A. D. 1873, hereinafter mentioned, operated to give effect thereto from and after that date.

Survey made by engineers of St. P. & P. R. R. Co. in 1 71 not authorized by that Co.

And this defendant further admits that after the passage by the said St. Paul and Pacific Railroad Company of the said resolutions of March 22, A. D. 1871, surveys of lines were made by engineers in the employment of the said St. Paul and Pacific Railroad Company; but this defendant avers that in so far as concerns the route of that portion of the said branch line lying opposite the lands in controversy in this suit the surveys so made by the said engineers were in violation and in disobedience of the said resolution of March 23, 1871, and were an unauthorized departure from the route by such resolution prescribed, and that the same remained wholly unauthorized by the said St. Paul and Pacific Railroad Company until long after the line of the defendant's railroad had been definitely located entirely across the State of Minnesota and a map thereof had been duly filed in the office of the Secretary of the Interior.

Map of that survey not accepted nor filed by Interior Dep't until Dec. 19, 1871, nor until after the N. P. R. R. Co.'s map of definite location had been filed.

And this defendant admits that on or about the 18th day of November, A. D. 1871, there was delivered to the Secretary of the Interior a map purporting to show the surveys hereinbefore mentioned; but this defendant avers the fact to be that the proper officers of the said Department refused to file the said map for the reason that the releases required by the said act of Congress of March 3, A. D. 1871, had not been executed and the same was not filed in the said Department until December 19, A. D. 1871.

And this defendant further avers that neither the said map nor the said surveyed route were ever accepted, adopted, or authorized by the said St. Paul and Pacific Railroad Company until the same were accepted and adopted at a meeting of the board of di-
383 rectors of the said company held on December 13, A. D. 1871, which was long after this defendant had definitely located its line of road entirely across the State of Minnesota and had duly filed a map showing such definite location with the Secretary of the Interior.

And this defendant submits that the adoption and ratification of the said surveyed route and of the said map made as aforesaid on December 13, A. D. 1871, could not lawfully have and did not have any retroactive effect whatever as against this defendant so as to make the said unauthorized survey a lawful and authorized definite location of the line of the said St. Paul and Pacific Railroad Company at a date prior to that last above mentioned.

And this defendant further admits that on or about December 19, A. D. 1871, the said St. Paul and Pacific Railroad Company executed and delivered to the Secretary of the Interior a written instrument purporting to release to the United States the land grant appertain-

ing to the said new branch running from the Mississippi river to Lake Superior, and also that appertaining to the abandoned line between Crow Wing and St. Vincent; but this defendant submits that the said release was wholly inoperative as to the first-mentioned of the said grants by reason of the facts hereinbefore stated, and that the same, on account of such inefficiency, wholly failed to comply with the terms and conditions of the said act of Congress of March 3, A. D. 1871, relating to the execution of a release by the said St. Paul and Pacific Railroad Company.

And this defendant further submits that the said condition was one precedent to the taking effect of the said act, and that even had the said St. Paul and Pacific Railroad Company been lawfully empowered to comply with the said condition the said act could not have taken effect until the filing of the said releases, and that by reason thereof no lawful location of the said altered branch lines could have been made prior to the bringing of the said act into effect by the performance on the part of the said St. Paul and Pacific Railroad Company of the said conditions precedent.

And this defendant further alleges that at the time of the filing of the plat of the said surveys in the General Land Office on December 19, A. D. 1871, the route of such surveys remained wholly unauthorized by the said act of Congress of March 3, A. D. 1871, and
384 that the same continued so to remain until the passage by Congress of the subsequent act approved March 3, A. D. 1873, entitled "An act for the extension of the time to the St. Paul and Pacific Railroad Company for the completion of its road."

And this defendant submits that the said last-mentioned act was not intended by Congress to have and did not, in law or in equity, have any retroactive effect as against this defendant so as to make the said surveys take effect as against this defendant at any date prior to the passage of the said last-mentioned act.

Lands along altered line much more valuable than those along original line.

And this defendant avers that the public lands of the United States lying opposite and adjacent to the line of the said unauthorized surveys made in the year 1871 by the said employés of the said St. Paul and Pacific Railroad Company were of far greater value than were the public lands of the United States lying opposite and adjacent to the route of the said branch running from St. Cloud to St. Vincent contemplated and authorized by the said act of March 3, A. D. 1871.

And this defendant further admits that on or about April 1, A. D. 1871, the said St. Paul and Pacific Railroad Company and the said First Division of the St. Paul and Pacific Railroad Company mutually entered into a lease and contract of substantially the purport stated in the said supplemental bill, in folios from 111 to 117, inclusive.

And this defendant further admits that on or about the same date the said First Division of the St. Paul and Pacific Railroad Company, in accordance with the terms of the said lease and contract, executed and issued its negotiable bonds to the amount of fifteen millions of dollars, with coupons for the payment of interest thereon

semi-annually at the rate of seven per centum, and that simultaneously therewith the said St. Paul and Pacific Railroad Company executed to trustees its mortgage of all its rights, property, and franchises to secure the payment of the principal and interest of the said bonds.

Northern Pacific R. R. Co. made no representations to purchasers of St. P. & P. bonds touching lands in controversy.

And this defendant admits that the said bonds when so issued had printed upon the face thereof the words: "First-mortgage bond upon three hundred and forty-eight miles of railroad and two million two hundred and seventeen thousand two hundred acres of lands;" but this defendant submits that the
385 said statement cannot be regarded as that of the said Northern Pacific Railroad Company, and furthermore that it appeared upon its face to be nothing more than the expression of the opinion and belief upon the part of its authors that the lands which would inure to the St. Paul and Pacific Railroad Company would amount to that quantity.

And this defendant further submits that even if the said bonds had been accompanied by a specific statement and declaration by the said Northern Pacific Railroad Company and over its corporate seal that the lands in controversy in this suit would inure to the said St. Paul and Pacific Railroad Company under the said acts of Congress, such statement would have amounted to no more than the expression of a mistaken opinion about a question of law, which would not have been binding upon any person whomsoever.

And this defendant further avers that all the parties connected with the issuance and negotiation of the said bonds honestly believed, and had good reason for believing, at the time when the said bonds were issued and negotiated that the said recital upon the face of said bonds was true, and that sufficient lands within the granted and indemnity limits along the said branch lines would be found subject to the said grants to satisfy the same, irrespective of the lands which would be lost to the said St. Paul and Pacific Railroad Company by reason of the line of the railroad of that company being obliged to cross the land grant of the Northern Pacific Railroad Company.

And this defendant denies that the Northern Pacific Railroad Company ever made or published or authorized to be made or published any statement or declaration whatever concerning the quantity of lands which would inure to the said St. Paul and Pacific Railroad Company under the said acts of Congress or any of the same.

And this defendant further admits that the said First Division of the St. Paul and Pacific Railroad Company entered upon the work of building the said branch roads and graded and ironed portions of them, amounting to about 139 miles in length in the aggregate, but that in the year 1872 became and was unable to further proceed with such work and suspended the same, and
386 subsequently made default in the payment of interest which had accrued on the said bonds so issued by it; and that thereafter John S. Kennedy, Henry M. Baker, and John S. Barnes

commenced suit in the circuit court of the United States for the district of Minnesota against the parties mentioned in the said supplemental bill, in folio 126, and that thereafter such proceedings in said suit were had that Jesse P. Farley was by the said court appointed receiver of all and singular the rights, property, and franchises of the said St. Paul and Pacific Railroad Company, including the said branch lines of railroad extending from Watab to Brainerd and from St. Cloud to St. Vincent, and that shortly after such appointment the said official qualified himself to act as such receiver and entered upon the duties of his trust.

And this defendant further admits that after the suspension of work as aforesaid upon the said branch lines the Legislature of the State of Minnesota passed divers acts extending the time for the completion of the said branch line, the last act in the said series being that one entitled as set forth in the said supplemental bill, in folios 133 and 134.

And this defendant further admits that after the appointment and qualification as aforesaid of the said Jessie P. Farley, he, the said Farley, did certain work upon portions of the said branch lines, so that afterwards the same were accepted by the Governor of the State of Minnesota as having been completed in the manner prescribed by the several acts of Legislature of said State relating thereto, and that afterwards the said official remained in possession and in control of the said branch lines until the same were acquired by the plaintiff herein some time in the year 1879.

And this defendant further admits that on or about April 11, A. D. 1879, a decree of foreclosure was rendered by the circuit court of the United States in and for the district of Minnesota, in a suit before that time begun and then pending therein for the foreclosure of the said $15,000,000 mortgage, and that thereafter such proceedings were had upon such decree that all the property, rights, and franchises appertaining to the said branch railroad extending from St. Cloud to St. Vincent covered and conveyed by the said mortgage were sold and conveyed by a master in chancery of this
387 court to the plaintiff herein, but this defendant denies that any of the lands in controversy in this suit were included within or conveyed by the said mortgage, decree of foreclosure, or sale, and denies that the said St. Paul, Minneapolis and Manitoba Railway Company ever acquired or had any interest, either legal or equitable, in or to the said lands or in or to any part of the same.

And this defendant further denies that by the completion of the said branch road from St. Cloud to St. Vincent or otherwise the said St. Paul and Pacific Railroad Company or the said St. Paul, Minneapolis and Manitoba Railway Company ever acquired any interest whatever, either legal or equitable, to any lands lying within the distance of forty miles on either side of the line of railroad of this defendant as the same has been located and constructed.

And this defendant further admits that the said lines of railroad from St. Paul to Watab and from St. Anthony to Breckenridge were completed, as required by law, between the said points on or about

October 25, A. D. 1871; that the said roads and their appurtenances and the said lands granted by Congress to aid in completing the same had been encumbered by divers and sundry trust deeds or mortgages; that such trust deeds were afterwards foreclosed by suits instituted and prosecuted in the district court of the State of Minnesota in and for the county of Ramsey therein, and that all of the rights, property, and franchises of the said First Division of the St. Paul and Pacific Railroad Company appertaining to the last-mentioned lines of railroad were in the year 1879 sold and conveyed to certain purchasers under and by virtue of such foreclosure, and that the same have since been conveyed to the plaintiff herein, and that afterwards the Legislature of the State of Minnesota passed an act, approved March 7, A. D. 1881, being chapter numbered 412 of the Special Laws of the State of Minnesota passed in that year, whereby, among other things, the said several purchases and acquisitions by the plaintiff herein were ratified and confirmed in so far as the same were capable thereof by the said Legislature.

N. P. R. R. Co. has never conceded lands in controversy to belong to St. P. & P. R. R. Co.

And this defendant further denies that the Northern Pacific Railroad Company ever conceded or admitted that the said St. Paul and Pacific Railroad Company had paramount or exclusive or
388 any right to all or to any of the odd-numbered sections within the limit of forty miles on either side of the line of railroad of this defendant, and denies that any of the bonds hereinbefore mentioned were ever sold upon the faith of any such concession or admission; but it submits that even had such an admission or concession been made by the Northern Pacific Railroad Company it would have amounted to no more than the expression of an erroneous legal opinion binding upon nobody, and of which no one would have been authorized to take any advantage.

This defendant admits that the said Northern Pacific Railroad Company set up a claim to the prior and exclusive right to and ownership of all the lands within the State of Minnesota lying within the limits of its grant, as defined by the said acts and joint resolutions of Congress relating thereto, and urged such claim in the Department of the Interior, at Washington, as soon as any occasion for its doing so arose, and has ever since maintained such claim both in the said Department and elsewhere.

This defendant denies that the Northern Pacific Railroad Company ever did any act to the end that about one million acres or any other quantity of land which otherwise might have fallen within the limits of any grant by Congress to aid in the construction of the said railroad running from St. Cloud to St. Vincent might be prevented from accruing to the State of Minnesota or to any corporation on account of the construction of the said line of railroad, save the location and construction of the Northern Pacific railroad, as hereinbefore alleged.

And this defendant submits that the pretenses of the plaintiff herein in this connection set forth in the said supplemental bill, in folios 165 and 166, are false upon their face, because the attempted location northwest from Crow Wing in the year 1869 was wholly

without authority from any act of Congress; and, furthermore, because the general direction of the route of the Northern Pacific railroad has always been from east to west, while that of the route of the said St. Vincent Branch has always been from south to north.

And this defendant further admits that on or about the 18th day of January, A. D. 1873, the Northern Pacific Railroad Company received patents from the United States for certain lands in-
389 cluded within the grant made to it by the said acts and joint resolutions of Congress, which the defendant supposes to be the same land referred to in the said supplemental bill in folios 167 and 168, but denies that any part of the said lands were ever relinquished by the said St. Paul and Pacific Railroad Company; and it avers that the said St. Paul and Pacific Railroad Company never had any shadow or spark of interest therein, either legal or equitable, vested or inchoate, and never attempted to make any relinquishment thereof.

The grant of lands to the Minneapolis and St. Cloud Co. had no condition of time attached.

And this defendant further admits that the said Minneapolis and St. Cloud Railroad Company had not located or built any part of the said new branch line of railroad running from the Mississippi river to Lake Superior prior to the passage of the said act of Congress of March 3, A. D. 1871, but it avers that none of the said acts of Congress or of the Legislature of the State of Minnesota relating to the said branch line required the location or construction of any part of the same by that company prior to that date or within any stated period whatever, so that the failure by that company to locate or construct the said line or portions thereof prior to said date did not in any manner affect the rights of that company to the said lands granted by Congress to aid in the construction of the said branch line.

And this defendant admits that the Secretary of the Interior some time in the month of May, A. D. 1873, declined to issue patents to the Northern Pacific Railroad Company for those certain lands described in the bill of complaint in that certain suit pending in this court wherein The Northern Pacific Railroad Company is plaintiff and the said St. Paul and Pacific Railroad Company and others are defendants; and that afterwards the said lands in the said bill of complaint described were certified and patented to the State of Minnesota, and that afterwards the Governor of the State of Minnesota executed and delivered an instrument in writing, purporting to convey to the said St. Paul and Pacific Railroad Company and its successors and assigns the lands so previously certified and patented by the Secretary of the Interior to the State of Minnesota; but this defendant avers that the said action of the Secretary of the Interior and of the Governor of the State of Minnesota were
390 wholly unauthorized by law and were invalid and ineffectual in every particular except to transfer the legal title to said lands, firstly, to the State of Minnesota, and, subsequently, to the said St. Paul and Pacific Railroad Company, without beneficial interest in either the said State or the said St. Paul and Pacific Rail-

road Company and as the mere naked trustee of the Northern Pacific Railroad Company.

And this defendant further admits that on or about the twenty-first day of June, A. D. 1875, the Northern Pacific Railroad Company filed in this court its bill of complaint, being the same one lastly hereinbefore referred to, but as to the contents of the said bill this defendant refers to the said bill itself, instead of stating the same herein or admitting the allegations of the said supplemental bill in relation thereto.

And this defendant further admits that after the filing of the said bill Jacob S. Wetmore, Thomas Denny, and Thomas Pearsall, professing to have been substituted as trustees in the said $15,000,000 mortgage of the said St. Paul and Pacific Railroad Company, appeared in the said original suit in this court as trustees in the said mortgage and filed their answer to the said original bill, but as to the contents of the said answer this plaintiff hereby refers to the said answer itself, instead of stating the same herein or admitting the allegations of the said supplemental bill in regard thereto.

And this defendant further admits the making and filing of a stipulation in the said suit substantially to the effect alleged in the said supplemental bill, in folios 182 and 183; that the said bill was dismissed as to the attorney general of the State of Minnesota, and that the said State has not yet appeared in said suit as a party thereto.

And this defendant further admits and it avers that after the making and filing of said bill and answers in the said original suit proofs had been taken both on behalf of the plaintiff and the defendant therein, and the evidence therein had been closed upon both sides, and the said cause duly set down for hearing upon the pleadings, answers, and proofs therein before this court prior to the date of the said foreclosure sale of the property, rights, and franchises of the said St. Paul and Pacific Railroad Company, at which the plaintiff herein became the purchaser, as hereinbefore stated.

St. P., M. & M. Co. a purchaser *pendente lite* as to lands in original suit.

391 And this defendant insists that in consequence thereof the plaintiff herein took nothing by its said purchase in the lands in controversy in the said original suit as against this defendant, save such rights, if any, as should be adjudged in the said suit to the St. Paul and Pacific Railroad Company or to the trustees of the said $15,000,000 mortgage, or both, upon the pleadings and proofs in the said original cause as the same stood at the time of the said purchase.

And this defendant further admits that on or about July 19, A. D. 1878, an order was made by this court, upon stipulation between the parties to the said original suit, appointing Edward Sawyer, Esq., a commissioner of this court for the care, custody, and sale of the said lands in the said original bill of complaint particularly described, and that since said time the said special commissioner has, in pursuance of the authority conferred upon him by the said order, sold large quantities of the said lands and received large

sums of money and securities to a large amount in payment therefor, which money and securities remain under the control of this court.

And this defendant further admits that on or about May 3, A. D. 1884, this court made its order granting permission to the plaintiff herein to appear in the said original suit and to file a supplemental bill in this court for the protection of its interests in said suit.

And this defendant further admits that prior to the filing of the said original bill the said Northern Pacific Railroad Company, on account of the completion of its line of railroad through the State of Minnesota, applied for a patent for the lands to which it was entitled on account of the construction of the said railroad under and by virtue of the said several acts and joint resolutions of Congress, and that it included in the list of lands by it so applied for the lands described in Exhibit "A" of the said supplemental bill; but it denies that the said lands or any of them were wrongfully included in such list, or that the same have ever formed any part of the said grant to aid in the construction of the said St. Paul and Pacific railroad, or that the said St. Paul and Pacific Railroad Company or the plaintiff in the said supplemental bill ever owned the
392 legal title or any title to or any interest in any part thereof; and it denies that any of the said lands were included within the patent issued to this company therefor by mistake or inadvertence; and denies that the said patent to the said Northern Pacific Railroad Company ought in equity or good conscience to be canceled or set aside to any extent whatsoever.

And this defendant further admits that the Northern Pacific Railroad Company has selected a list of lands in odd-numbered sections, which lands include those particularly described in Exhibit "B" of the said supplemental bill, and that it claims the ownership thereof as a part of its said land grant, and that it fully expects to procure a patent from the President of the United States conveying to it all the said lands as a part of its said grant.

No part of route of N. P. R. R. within route of St. P. & P. R. R. branches.

And this defendant further denies that any part of the route of the said Northern Pacific railroad is within the route of the said projected branch from the Mississippi river to Lake Superior, or within that of the said branch authorized to be constructed from St. Anthony, via Crow Wing, to St. Vincent.

Further answering the said supplemental bill, this defendant avers that prior to July 26, A. D. 1870, the Northern Pacific Railroad Company had determined and established the general route of its said railroad through the State of Minnesota, and had caused a map to be made in due form, as required by the said several acts and joint resolutions of Congress relating to the Northern Pacific railroad, showing such general route as determined and established, and on that date caused such map to be duly authenticated and filed in the General Land Office at Washington, whereupon and on August 13, A. D. 1870, the Secretary of the Interior, by an order or letter of instructions in due form of law bear-

Fixing of general route of N. P. R. R., filing of maps of same, and withdrawals of lands in accordance therewith.

ing that date, caused to be withdrawn from sale, pre-emption, homestead, or other disposal the odd-numbered sections of public lands which at that date had not been sold or reserved and to which prior rights had not at that date attached within twenty miles on each side of the said general route, the unsurveyed as well as the surveyed lands having been included in such reservation.

And this defendant further alleges that afterwards the Northern Pacific Railroad Company decided to change the location of the said general route of its said railroad through the State of Min-
393 nesota to some extent, and thereupon established an altered or amended line of such general route; and thereupon and prior to October 12, A. D. 1870, caused to be made and duly authenticated another and additional map showing such altered or amended general route, and duly filed the same on that date in the said General Land Office; whereupon and on October 12, A. D. 1870, the Secretary of the Interior duly made and issued a further and additional order or letter of instructions, whereby the said original order, bearing date on August 13, A. D. 1870, was modified so as to conform to the amendments and changes made in such general route and so as to withdraw from any and all other disposals all the odd-numbered sections of the public lands of the United States lying within twenty miles on either side of the said altered or amended general route.

Definite location of N. P. R. R. in the State of Minnesota.

And this defendant further alleges that the lands so withdrawn from disposal by the said orders of August 13, A. D. 1870, and October 12, A. D. 1870, have ever since remained so withdrawn and reserved for the use and benefit of the said Northern Pacific Railroad Company and its successors and assigns, except in so far as the subsequent making of the definite location of the route of the said Northern Pacific railroad and the filing of the map thereof in the office of the Secretary of the Interior has had the effect to release from the operation of such withdrawals any lands included within the limits of the said withdrawals and falling outside the limits established by such definite location.

And this defendant further alleges that while the said withdrawals remained in full force, and prior to August 1, A. D. 1871, the said Northern Pacific Railroad Company definitely located upon the surface of the earth by actual surveys and measurements all that part of the line of its said railroad extending from Thomson Junction, in the county of Carlton, in the State of Minnesota, across the said State to the western boundary thereof; and shortly afterwards and prior to November 18 of the same year caused to be made and duly authenticated a map showing such definite location; and afterwards and on the day last aforesaid duly delivered the said map to the Secretary of the Interior, with the intent that the same should be filed and remain on file from and after that date in the office of the Commissioner of the General Land Office in the said Department.

394 And this defendant further alleges that after the line of the said railroad had been definitely located as aforesaid

within the State of Minnesota and prior to November 18, A. D. 1871, the said Northern Pacific Railroad Company duly constructed and completed in all respects, as required by the said several acts and joint resolutions of Congress relating thereto, all that part of the said Northern Pacific railroad so as aforesaid definitely located, and the same had been actually completed and put into operation prior to the delivery of the said map of definite location to the Secretary of the Interior as aforesaid.

And this defendant further avers that at the time of the making of the said withdrawal of lands of August 13, A. D. 1870, the United States had full title, not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights, in and to all the several parcels of land described in Exhibits "A" and "B" of the said supplemental bill, and that all of the said lands lie within a distance of twenty miles from the line of the Northern Pacific railroad, as the same has been definitely located and constructed, and also with the exception of the tracts particularly described in Exhibit "A" of this answer, all of the same lie within the limits of the said original withdrawal.

And this defendant further alleges that at the time of the making of the said amended withdrawal of lands of October 12, A. D. 1870, the United States had full title, not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights, in and to all the tracts of land described in Exhibits "A" and "B" of the said supplemental bill, and that all of the said lands lie within a distance of twenty miles from the line of the Northern Pacific railroad, as the same has been definitely located and constructed, and also with the exception of the tracts particularly described in Exhibit "A" of this answer, all of the same lie within the limits of the said amended withdrawal.

And this defendant further alleges that at the time of the definite location by the said Northern Pacific Railroad Company of its line of railroad through the State of Minnesota, as hereinbefore set forth, and the filing of the map of such definite location in the office
395 of the Commissioner of the General Land Office the United States had full title, not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights, in and to all the tracts of land described in Exhibits "A" and "B" of the said supplemental bill, and this defendant insists that by reason of the premises this defendant is entitled to all the said tracts of land and to receive from the President of the United States patents in due form of law for the conveyance thereof.

All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that the said supplemental bill be dismissed and

that the plaintiff therein be decreed to pay this defendant reasonable costs and charges in this behalf most wrongfully sustained.

NORTHERN PACIFIC RAILROAD COMPANY,

[CORPORATE SEAL.] By ROBERT HARRIS, *President.*

Attest: SAM'L WILKESON, *Secretary.*

W. P. CLOUGH,
Solicitor for Defendant.
GEO. GRAY, *Of Counsel.*

(Certificate of commissioner southern district N. Y.)

396 EXHIBIT "A."

I.

List of lands described in Exhibits "A" and "B" of the supplemental bill, situated outside the limits of withdrawal of August 13, 1870, referred to in the foregoing answer.

	Sect'n.	Town.	Range.	Acres.
All of	5	137	46	640.61
All of	7	137	46	644.33
N ½ n e ¼, s e ¼, w ½	9	137	46	560
All of	17	137	46	640
All of	19	137	46	643.21
N w ¼	21	137	46	160
N e ¼ ne ¼, n e ¼ n w ¼, n e ¼ s e ¼, s ½ s e ¼, and s ½ s w ¼	29	137	46	280
All of	31	137	46	642.23
All of	33	137	46	640
All of	1	137	47	639.79
All of	3	137	47	642.33
All of	5	137	47	643.60
All of	7	137	47	639.61
All of	9	137	47	640
All of	11	137	47	640
All of	13	137	47	640
All of	15	137	47	640
All of	17	137	47	640
All of	19	137	47	482.11
All of	21	137	47	640
All of	23	137	47	640
All of	25	137	47	640
All of	27	137	47	640
All of	29	137	47	640
All of	33	137	47	640
All of	35	137	47	640

397 II.

List of lands described in Exhibits "A" and "B" of the supplemental bill, situated outside the limits of withdrawal of October 12, 1870, referred to in the foregoing answer.

	Sect'n.	Town.	Range.	Acres.
E ½ n e ¼	5	139	48	76
All of	5	137	46	640.61
All of	7	137	46	644.33
N ½ n e ¼, s e ¼, w ½	9	137	46	560
All of	17	137	46	640
All of	19	137	46	643.21
N w ¼	21	137	46	160
N e ¼ n e ¼, n e ¼ n w ¼, n e ¼ s e ¼, s ½ s e ¼, and s ½ s w ¼	29	137	46	280
All of	31	137	46	642.23
All of	33	137	46	640
All of	1	137	47	639.79
All of	3	137	47	642.33
All of	5	137	47	643.60
All of	7	137	47	639.61
All of	9	137	47	640
All of	11	137	47	640
All of	13	137	47	640
All of	15	137	47	640
All of	17	137	47	640
All of	19	137	47	482.11
All of	21	137	47	640
All of	23	137	47	640
All of	25	137	47	640
All of	27	137	47	640
All of	29	137	47	640
All of	33	137	47	640
All of	35	137	47	640

398 And afterwards, to wit, on the 1st day of September, 1884, the replication of the complainant to the answer of the defendant was filed in this cause in the words and figures following, viz:

Replication.

399 The United States Circuit Court for the District of Minnesota.
In Equity.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

The replication of the Saint Paul, Minneapolis and Manitoba Railway Company, complainant, to the answer of The Northern Pacific Railroad Company, defendant.

This repliant, saving and reserving unto himself all and all

400 manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

401 R. B. GALUSHA,
Solicitor for Plaintiff.

GEO. B. YOUNG,
H. R. BIGELOW,
S. U. PINNEY,
Of Counsel.

Filed September 1st, 1884.

OSCAR B. HILLIS, *Clerk.*

402 And afterwards, to wit, on the 10th day of September, A. D. 1885, the following further proceedings were had and entered of record in Term Minutes F, page 715, which are in the words and figures following:

403 United States Circuit Court for the District of Minnesota. Term Minutes, June Term, A. D. 1885. September 10, '85.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
ST. PAUL AND PACIFIC RAILROAD COMPANY *et al.*

ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY CO.
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

It being agreed by the solicitors for the respective parties in the above-entitled causes that they be heard together, and said causes being regularly called for hearing upon the pleadings and final proofs therein, the said Northern Pacific Railroad Company appeared by W. P. Clough, Esq., and Geo. Gray, Esq., its solicitors, and the St. Paul and Pacific Railroad Company *et al.* and the St. Paul, Minneapolis and Manitoba Railway Company appearing by their solicitors, R. B. Galusha, Esq.; Geo. B. Young, Esq.; H. R. Bigelow, Esq., and S. U. Pinney, Esq., the hearing of said causes is proceeded with as follows, to wit:

404 W. P. Clough, Esq., opens the case on behalf of the Northern Pacific Railroad Company.

And the hearing of said causes not being concluded at the hour of adjournment, it is ordered that the further hearing of the same be, and it is hereby, postponed until to-morrow morning at 10 o'clock.

405 And afterwards, to wit, on the 11th day of September, A. D. 1885, the following further proceedings were had and entered of record in Term Minutes "F," page 718, in the words and figures following:

406 U. S. Circuit Court for the District of Minnesota. Term Minutes, June Term, 1885. September 11, 1885.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

The above-entitled causes coming on to be further heard, the same *is* argued upon behalf of the St. Paul & Pacific Railroad Company *et al.* and the St. Paul, Minneapolis and Manitoba Railway Company by S. U. Pinney, Esq., and the hearing of said causes not being concluded at the hour of adjournment, it is ordered that further proceedings therein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

407 And afterwards, to wit, on the 12th day of September, 1885, the following further proceedings were had and entered of record in Term Minutes F, page 721, in the words and figures following, viz:

408 U. S. Circuit Court for the District of Minnesota. Term Minutes, June Term, A. D. 1885. September 12, 1885.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
ST. PAUL AND PACIFIC RAILROAD COMPANY *et al.*

ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

The above-entitled causes coming on to be further heard, the hearing of the same is proceeded with as follows:

S. U. Pinney, Esq., continued his argument on behalf of the St. Paul and Pacific Railroad Company and the St. Paul, Minneapolis and Manitoba Railway Company.

Geo. B. Young, Esq., argues said cause on behalf of same parties.

W. P. Clough, Esq., argues the case in reply on behalf of the Northern Pacific Railroad Company.

409 And the hearing of said cause not being concluded at the hour of adjournment, it is ordered that further proceedings herein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

410 And afterwards, to wit, on the 14th day of September, A. D. 1884, the following further proceedings were had and en-

tered of record in Term Minutes "F," page 759, in the words and figures following:

411 U. S. Circuit Court for the District of Minnesota. Term Minutes, June Term, A. D. 1885. September 14, 1885.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY CO. *et al.*

ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

The above-entitled causes coming on for further hearing, the hearing of the same is proceeded with as follows, to wit:

W. P. Clough, Esq., further argues the case in reply on behalf of the Northern Pacific Railroad Company; thereupon said causes are duly submitted and by the court taken under advisement.

412 And afterwards, to wit, on the 3rd day of March, A. D. 1886, the following opinion was filed; which said opinion is in the words and figures following:

Opinion.

United States Circuit Court, District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*
} Original Bill.

and

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.
} Supplemental Bill.

413 NORTHERN PAC. R. CO.
v.
ST. PAUL, M. & M. R'Y CO. and Others.

BREWER, *J.:*

The two principal contestants in this case are land-grant railroad companies. Their lines cross at Glyndon, and the contest is as to the title to lands in the vicinity of this crossing, and embraces lands in place, indemnity lands, and lands within withdrawal limits. The first inquiry naturally runs to lands in place.

Congress by different acts, at different times, grants the alternate odd-numbered sections on either side to two roads. Their lines cross. In the vicinity of the crossing, obviously, certain sections are within the letter of each grant. Which takes the title? In view of the many land grants it was to be expected that this question would early arise. It has arisen and the primary rule of de-

termination been settled. First, it was held that upon construction of the road the grant took effect, and, by relation, as of the date of the act making the grant. "The grant then becomes certain, and by relation has the same effect upon the selected parcels as if it had specifically described them." Railroad Co. *v.* U. S., 92 U. S., 741. "The grant takes effect upon the sections, by relation, as of the date of the act of Congress. In that sense we say that the grant is one *in præsenti*. It cuts off all claims other than those mentioned to any portion of the lands from the date of the act, and passes the title as fully as though the lands had been capable of identification. Van Wyck *v.* Knevals, 106 U. S., 365; S. C., 1 Sup. Ct. Rep., 336; Railway Co. *v.* Alling, 99 U. S., 475; Missouri, K. & T. R'y Co. *v.* Kansas Pac. R'y Co., 97 U. S., 498." And, then, as a corollary, the Supreme Court ruled that as between two roads, not priority of construction nor priority of location, but priority of grant determined the title:

"The construction thus given to the grant in this case is, of course, applicable to all similar congressional grants, and there is a vast number of them, and it will tend, we think, to prevent controversies between the grantees and those claiming under them respecting the title to the lands covered by their several grants, and put an end to struggles to encroach upon the rights of others by securing an earlier location. Our judgment is that the title of the plaintiff, attaching to the lands in controversy by a location of the route of the road, being followed by a construction of the road, took effect, by relation, as of the date of the act of 1862, so as to cut off all intervening claimants, except in the cases where reservations were specially made in that act and the amendatory act of 1864. * * * The grant made was in the nature of a float, and the reservations excluded only specific tracts to which certain interests had attached before the grant had become definite, or which had been specially withheld from sale for public uses and tracts having a peculiar character, such as swamp lands or mineral lands, the sale of which was then against the general policy of the Government. It was not within its language or purpose to except from its operation any portion of the designated lands for the purpose of aiding in the construction of other roads." Missouri, K. & T. R. Co. *v.* Kansas Pac. R. Co., 97 U. S., 491.

The rule thus established easily settles most similar controversies. Comparing the date of one act of Congress with that of another is all that must be done. Unfortunately in this case the solution is not so simple and easy. Which road has the prior grant? A reference to the legislation is necessary. The title of the Northern Pacific Railroad Company to these lands rests upon the act of July 2, 1864. 13 St. at Large, 265. The third section contains the grant:

"And be it further enacted, That there be, and hereby is, granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad

line as said company may adopt through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, That if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided further, That the railroad company receiving the previous grant of land may assign their interest to said Northern Pacific Railroad Company or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: Provided further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road may be selected, as above provided."

The road having been constructed, the grant, by relation, takes effect as of that date, July 2, 1864. Of this there can be no doubt. The defendant claims that its grant was made by the act of March 3, 1857, more than seven years prior. This is the matter in dispute. The first section of the act of 1857 makes this grant:

"That there be, and is hereby, granted to the Territory of Minnesota for the purpose of aiding in the construction of railroads from Stillwater, by way of St. Paul and St. Anthony, to a point
414 between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory may determine, every alternate section of land designated by odd numbers, for six sections in width, on each side of each of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any section or any part thereof granted as aforesaid; or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated

or to which the rights of pre-emption have attached as aforesaid, which lands thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid: Provided, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said lines or branches: Provided further, That the said lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: And provided further, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

The "branch via St. Cloud," etc., is the line which crosses the Northern Pacific road at Glyndon, and presents the matter in dispute. The Legislature of Minnesota named St. Vincent, a place on the northern boundary of the State, as the terminal point on the Red River. At first the Minnesota & Pacific Railroad Company was made the beneficiary of this grant, but subsequently and on March 10, 1862, by proper legislative action, the St. Paul & Pacific Railroad Company, of which the principal defendant is the successor, became the beneficiary. On July 12, 1862, a portion of this grant was vacated by resolution of Congress as follows:

"Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in lieu of that part of the railroad grant to Minnesota Territory by act of Congress, approved third of March, 1857, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line, between the Falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof: Provided this resolution shall take effect from the filing in the General Land Office of the acceptance by the authorities aforesaid of such substitution, whereupon the land north of the intersection aforesaid in the grant, as authorized by the said act of third March, 1857, being by said acceptance disincumbered of the railroad grant, shall be dealt with as other public lands of the United States."

The proper acceptances were filed, so that the proposed change became operative. On March 3, 1865, Congress passed an act enlarging the grant of 1857 to 10 sections per mile, the ninth section of which reads as follows:

"And be it further enacted, That the provisions of this act shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July 12, 1862, entitled 'A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes,' notwithstanding the vacation thereof by said State as though said joint resolution had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated."

On March 3, 1871, Congress passed a further act entitled "An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands," which reads:

"Be it enacted, etc., That the St. Paul & Pacific Railroad Company may so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior, it may locate and construct in lieu thereof a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines as is provided for the present lines by existing laws: Provided, however, That this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to market without further legislation."

Counsel for defendant speak of these odd-numbered sections as "granted by act of Congress of March 3, 1857, and located under the act of Congress, March 3, 1871." Now, if this is a fair description of defendant's title, its grant is, of course, of prior date, and we must look to the exceptions named therein for any support of complainant's title. I am unable to agree with counsel in this respect. Reading the legislation of Congress, as interpreted by the geography of the State, it is obvious that prior to the act of March 3, 1871, there was no thought of a road down the valley of the Red River or crossing the Northern Pacific line within a hundred miles of Glyndon, and the fair construction of that act makes a new grant in lieu of one revoked. The grant of 1857 was for a branch road via St. Cloud and Crow Wing to St. Vincent. Where a grant is made to aid in the construction of a road between two named termini, the amount of the grant being proportioned to the length of the
415 road, the necessary implication is that the road is to be constructed in as direct a line between such termini as the

topography will reasonably permit. No gigantic bow, adding from 30 to 50 per cent. to the amount of the grant, can be considered within the contemplation of the grantor. A road passing through St. Cloud and Crow Wing will, in a direct line towards St. Vincent, course a little north of northwest, while to go from Crow Wing to Glyndon the road will pass about a hundred miles nearly due west, and then, to reach St. Vincent, turn at almost a right angle, and run north down the Red River Valley. The most casual glance at the map shows that no such line was in the thought of Congress when it passed the act of March 3, 1857; but if there were any possible doubt after a consideration of this act alone, that doubt is removed by the act of July 12, 1862. That vacates this grant northwesterly "from the intersection of the tenth standard parallel with the fourth guide meridian." This furnishes in the thought of the grantor a new point on the line of the intended grant, viz., the point of intersection, etc. Now, this point is on the direct line from Crow Wing to St. Vincent, and is ninety miles east and six miles north of Glyndon. Of course, this excludes the idea of a line which, to reach St. Vincent via Glyndon, must turn on itself, come south six miles, then west ninety miles, and then, at a right angle, push directly north to its terminus. It is true this named point of intersection lies 40 miles north of the Northern Pacific line, and if the road had been constructed so as to earn that grant it would have crossed the road of complainant and obtained a prior title to the land within the conflicting limits; but without subsequent legislation the construction of a road on the present line would have given defendant no pretense of title to any lands within the limits of complainant's grant; for while the act of 1857 made no definite location of the line of road, therefore did not designate the precise sections granted, and so had some of the elements of a float, yet it did define the general boundaries of the grant, was in no complete sense a float, and did not give a right to lands wherever, in the unoccupied public domain, the grantee might see fit to build its road.

Turning now to the act of 1871, and what is its fair construction? Bear in mind that at that date there was an existing grant, whose general boundaries were indicated, unearned, and along a line of road which had not been built and might never be. The title to the act suggests its purport—authorizing a change of line "in consideration of relinquishment of lands." Evidently a vacation of some existing grant was the condition—the consideration—of whatever Congress was proposing to give by this act. The act itself provides, first, that the donee may, in lieu of certain authorized branch lines, construct certain other branch lines, and that along these new lines it may have the same proportional grant, upon two provisos—first, accord with the legislation of Minnesota, and, second, a full relinquishment of all claims to land along the original branch lines, which land it was further enacted should then be immediately restored to market. Could anything be clearer than that, upon the acceptance of this act, the old grant was surrendered, and in lieu thereof a new one taken. The act does not provide for relocating

existing branches, but for new ones in lieu of those existing. It does not transfer an existing grant, but makes a new grant of a proportional amount along the new lines and requires, as a condition, a formal release of "all lands along said abandoned lines." I am aware that the force of the foregoing argument is somewhat weakened by the fact that in 1869 the St. Paul & Pacific Company caused a survey and location to be made of a line from Crow Wing towards St. Vincent, such line passing westerly from Crow Wing about half the distance towards Glyndon, then turning north and passing between Otter Tail and Rush Lakes in the direction of St. Vincent to a point about 15 miles north of the tenth standard parallel. This line, if extended to St. Vincent, would have run about half way between the present constructed road from Glyndon northward and a line running directly from Crow Wing through the point of intersection named in the act of 1862. A map of this survey and location was filed in the office of the Secretary of the Interior on December 9, 1869, but never accepted by that Department, the Secretary holding that *prima facie* it was an unwarrantable departure from the true line, and that before acceptance proof must be made that a direct route was impracticable. Now the act of 1871 names as one of the new branches a line "from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake." This, it is claimed, is congressional recognition of that survey and line, and an implied assent to the claim of the company that such line was within the scope of the original granting act. There is, doubtless, truth and force in this, but not sufficient, in my judgment, to overthrow the conclusions reached from the other facts. These reasons suggest themselves. It is obviously inconsistent with the act of 1862. The description may have resulted from congressional ignorance of geographical facts. As all that was sought was description of the new line, anything which would make that plain was in order and should not be carried beyond the mere purpose of description. As this survey of 1869 was the only one on file in the Department or as yet made by the company, a reference to that would give the most certainty to the description. The act was passed long after the grant to the Northern Pacific, and no mere implication should defeat or limit that grant. The road, as constructed, nowhere runs within 20 miles of that line, and at the point of crossing the Northern Pacific is more than 30 miles distant. While, as between the Government and its grantee, any departure is waived if not insisted upon by the former, yet, as between two donees contesting for rights in the same lands, large departures ought certainly to have weight in determining title. My conclusion, then, from the foregoing is that the Northern Pacific grant is prior.

416 But this only introduces me to another question. Assuming the priority of the Northern Pacific grant, it is earnestly contended that by its terms all subsequent grants made prior to the definite location of its road are excepted. The definite location, it is conceded, was not made until after the act of 1871. The difference between the language of the grant to the Union Pacific con-

strued in 97 U. S., *supra*, and that in the grant to the Northern Pacific is the basis of this argument. The former grant reads thus:

"Five alternate sections per mile on each side of said railroad on the line thereof and within the limits of ten miles on each side of said road not sold, reserved, or otherwise disposed of by the United States and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed." 12 St. at Large, 492, § 3.

In the latter we find these words:

"And whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever or prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers not more than ten miles beyond the limits of said alternate sections."

The question is as to the intent of Congress in these acts, for as to its power as owner to dispose of these lands as it pleases there can be no question. In Missouri, K. & T. R'y Co. *v.* Kansas Pac. R'y Co., 97 U. S., 497, the Supreme Court said:

"It is always to be borne in mind in construing a congressional grant that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. To the validity of such transfers it may be admitted that there must exist a present power of identification of the land, and that where no such power exists instruments with words of present grant are operative, if at all, only as contracts to convey; but the rules of the common law must yield in this, as in all other causes, to the legislative will.

We are not limited, therefore, to the technical force and meaning of terms as used in conveyances and contracts between individuals. We must construe this act as any other law of Congress and ascertain from all means at command the intent of the legislator. Stress is laid on the use of the word "granted" in the one act and its omission from the other. This word, it is claimed, has a well-recognized meaning in the land legislation of Congress distinct from "sale," "pre-emption," and "homestead." Its use indicates the intention of future grants within this Territory, and notifies the grantee that such future grants, if made before its definite location, will have precedence. In fact it reserves from this all such future grants. The vastness of this grant and the wide range given for the location of the road are suggested as reasons why Congress increased the exceptions previously made in the Union Pacific act. The fact as stated that this is the only land-grant act in which this word is used in a similar connection is noticed as evidence of the intent.

At the hearing the arguments in favor of these views were forcibly presented, and seemed to me very persuasive. Subsequent reflection has led me to a different conclusion. I state briefly my reasons: The decision in 97 U. S., *supra*, places all land-grant roads on the same plane, and that a different one from that occupied by settlers and private purchasers, and settles all conflicts of title by a rule clear, simple, and just, viz., priority of grant. Congress may fairly be regarded as standing indifferent between all roads and intending to apply this just and simple rule of priority as between successive beneficiaries. Before any departure from such intent is adjudged the fact should be made clear. The burden is on the later beneficiary averring such departure. The language of each act is broad and covers every possible disposition by the Government intermediate the act and the location—"sold, reserved, or otherwise disposed of," in one; "reserved, sold, granted, or otherwise appropriated" in the other. Is any term broader or more comprehensive than "disposed of?" Used in a similar private contract between individuals would any one doubt the sweep of the exception? Yet the Supreme Court ruled that it did not except "any portion of the designated lands for the purpose of aiding in the construction of other roads." Counsel would limit the scope of the term on the principle *noscitur a sociis*. The use of the qualifying word "otherwise" makes against the application of that principle; but, giving it full force, is not a grant a disposition kindred to a sale, if not a reservation? Counsel's argument rests on the technical force of the phraseology, while I understand the Supreme Court to base the rule on the presumed attitude of Congress towards such public improvements. While the grant is vast, the line to be constructed in order to earn it is continental. The grant was made because Congress believed the public good required the road, and, in view of the length of the line, the character of the country through which it was to pass, the paucity of settlements therein, and the supposed difficulties in the operation of a road in that northern latitude, it is fairer to presume that Congress intended the freest bounty, rather than to believe that it burdened the grant with extra exceptions, which, when construction became feasible, might largely deplete it of value. Further, Congress had in thought at the time other railroad grants, and in the first proviso made special provision therefor. It there deducted from this grant any lands theretofore granted to any road whose line should prove to be upon the same general route, and authorized consolidation of companies. Without consolidation the Northern Pacific would fail of such lands, and that without any right of indemnity elsewhere along its line. If further special provision for conflict with other land grants was intended would not
417 such intention have been made manifest by further proviso, or at least by language of unmistakable import? I can but think the rule laid down in 97 U. S., *supra*, applicable to the Northern Pacific land grant, and therefore must hold that its title to the lands in place antedates that of the defendant.

But it is said that the Northern Pacific is estopped from claiming title to these lands. The defendant claims title by foreclosure of a

mortgage given by the St. Paul & Pacific Company of date April 1, 1871. At the time of the passage of the act of March, 1871, as well as at the time of the execution of the mortgage just referred to, the Northern Pacific Company was the owner of substantially all the stock in the St. Paul & Pacific Company, elected its directors, and controlled its actions. The act of March, 1871, was passed at the instance of the Northern Pacific. The bonds secured by said mortgage were negotiated by a committee representing the mortgagor, but really named by the Northern Pacific Company. The bonds were headed, "First-mortgage bond upon 348 miles of railroad, and 2,217,200 acres of land." The bond also referred to the accompanying mortgage, and its recitals, so far as they bear on this matter, are as follows:

"And which conveys also to the said trustees all the right, title, and interest which the company last aforesaid now has or shall or may hereafter acquire by the construction of said railroads or any part thereof or otherwise in, to, or concerning certain lands situate in the said State which were heretofore granted by the Congress of the United States to aid in the construction of such railroads by acts of the said Congress approved, respectively, March 3, 1857, March 3, 1865, and March 3, 1871, the extent and aggregate area of such lands to which said company will become entitled by the construction of said railroads, under existing legislation, being estimated at two millions two hundred and seventeen thousand and two hundred acres, more or less."

The granting part of the mortgage alluded to the lands in the following terms:

"And also all right, title, and interest which said party of the first part now has and all right, title, and interest which the said party of the first part, its successors or assigns, shall or may at any time hereafter acquire by reason of the construction of said railroads or of either or of any part of either thereof or otherwise in, to, or concerning the lands situate, lying, and being in the State of Minnesota which are embraced or intended to be embraced in the grants aforesaid or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of said Congress hereinbefore mentioned or either of them and which have been granted by said State to the party of the first part or shall or may be granted or conveyed to the said party of the first part, its successors or assigns, to aid in the construction of the said lines of railroad or of either or of any part of either thereof."

In order to make the number of acres named the grant must have been full. Now, I fail to see how anything done before the issue of these bonds can have any bearing on the matter of estoppel. If the Northern Pacific owned both properties, why could it not secure any legislation it wished in reference to either without wronging any one? Perhaps the change in location of branches may have been to the interest of the Northern Pacific, but it was no more than taking money out of one pocket and putting it in another. All belonged, both before and after the change, to the Northern Pacific. Assuming that the Northern Pacific is re-

sponsible for the representations in the bonds and mortgage as having put the words in the mouth of the mortgagor, I cannot think there is anything in them to preclude it from asserting any legal title it may have to these lands. The representation was in terms only an estimate. The line of the road had not been definitely located. Its exact length could not be positively affirmed. The distance given was, of course, only an approximation. The grant was proportioned to the length. Suppose there had been no conflict of grant and the road, as built, had fallen short eight miles of the distance named, would the Northern Pacific have been bound to make up the deficiency in the area of the grant? Parties are assumed to act and negotiate on the basis of a knowledge of general and notorious facts. The acts under which the grant was made were named in the instruments. The extent and limitations of the grant were thus declared. Nowhere is it suggested that the grant would be satisfied by the lands in place and no recourse necessary to the indemnity limits. It was generally known that the country along the proposed line was sparsely occupied. It may have been expected that little recourse would be necessary to the indemnity limits, but the facts were stated and the purchaser of the bonds took his chances thereon. But counsel urge, according to the present claim of the Northern Pacific, the lands within its limits were not included in the St. Paul & Pacific grant, and therefore for them there could be no indemnity. Assume that such is the correct construction, yet the representation contains no intimation that the Northern Pacific intended to waive its legal rights. Nothing was concealed. The sources of title were disclosed. The limitations therein were patent. If assurance from the Northern Pacific was desired it should have been asked. The purchasers took all chances as to the construction of either road and were bound to assume that each would claim and receive its legal right. To sustain an estoppel under these circumstances would carry the doctrine far beyond any adjudicated case, as well as beyond the demands of equity and justice.

I turn now to the consideration of the contest so far as it relates to lands within the withdrawal limits of the Northern Pacific. On August 13, 1870, a map of the general route to the western boundary of Minnesota was filed in the Interior Department and a withdrawal made by that Department. Subsequently and on October 12, 1870, an amended map of general route was filed and a second withdrawal made. This second withdrawal is the only one to be considered, for lands not within its limits were restored. This withdrawal was before the act of 1871. Was the grant made by that act inoperative
418 within its limits? The withdrawal was in terms "from sale, pre-emption, homestead, and other disposal." The act of 1857 contains this proviso:

"And provided further, that any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate

the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States." 11 St. at Large, 196.

The act of 1865 contains a similar provision and the act of 1871 provided that the grant "be taken in the same manner along said altered lines as is provided for the present lines by existing laws," so lands reserved from disposal by competent authority at that date were in terms excepted from the grant. Both the validity and extent of this withdrawal are challenged. Its invalidity is asserted on the ground that no map of the entire general route to the Pacific, but only of that portion extending to the western boundary of Minnesota, had been filed, and the case of Railroad Co. *v.* Herring, 110 U. S., 27, S. C., 3 Sup. C't Rep., 485, is cited. I do not think that case in point or the reason sufficient. In that case the contest was between the railroad company and parties making private entries of lands within the indemnity limits. No withdrawal had in fact been made, and only a map of part of the route filed. The Court held that no right of selection of indemnity lands accrued until the amount to be selected had been ascertained by the definite location of the entire route; that the filing of a partial map did not operate as a withdrawal or compel a withdrawal, and, there having been no withdrawal, the right of private entry was undisturbed. I do not understand it to deny the power of withdrawal or its effect if made. It surely is no reversal of prior decisions in respect to withdrawals. The matter of withdrawals was fully considered in the Des Moines River Grant cases. Wolcott *v.* Des Moines Co., 5 Wall., 681; Williams *v.* Baker, 17 Wall., 144; Homestead Co. *v.* Railroad Co., *id.*, 153; Wolsey *v.* Chapman, 101 U. S., 755; Dubuque R. Co. *v.* Des Moines R. Co., 109 U. S., 329; S. C., 3 Sup. C't Rep., 188.

The grant in those cases was as follows:

"For the purpose of aiding said Territory to improve the navigation of the Des Moines river from its mouth to the Raccoon Fork, so called, in said Territory, one equal moiety, in alternate sections, of the public lands in a strip five miles in width on each side of said river."

No withdrawal was in terms authorized, yet a withdrawal was in fact made, extending not merely to the Raccoon Fork, but above it to the northern boundary of the Territory. The Supreme Court held that the grant only extended to the Raccoon Fork, but sustained the validity of the entire withdrawal. In 5 Wall., *supra*, the Court said:

"It has been argued that these lands had not been reserved by competent authority, and hence that the reservation was nugatory. As we have seen, they were reserved from sale for the special purpose of aiding in the improvement of the Des Moines river—first by the Secretary of the Treasury when the Land Department was under his supervision and control, and again by the Secretary of the Interior after the establishment of this Department, to which the duties were assigned, and afterwards continued by this Depart-

ment under instructions from the President and Cabinet; besides, if this power was not competent, which we think it was ever since the establishment of the Land Department, and which has been exercised down to the present time, the grant of eighth of August, 1846, carried along with it, by necessary implication, not only the power, but the duty, of the Land Office to reserve from sale the lands embraced in the grant; otherwise its object might be utterly defeated. Hence, immediately upon a grant being made by Congress for any of these public purposes to a State, notice is given by the Commissioner of the Land Office to the registers and receivers to stop all sales, either public or by private entry. Such notice was given the same day the grant was made, in 1856, for the benefit of these railroads."

And also in the same case it was held that a railroad grant of like import with that in question here was not operative within the limits of the withdrawal.

Again, the extent of the withdrawal is challenged. While no express direction or withdrawal is found in the Northern Pacific act, yet its language contemplates a withdrawal, but only from "sale, entry, and pre-emption," and therefore impliedly forbids a withdrawal for any other purpose, and the case of Kansas Pac. R'y Co. *v.* Dunmeyer, 113 U. S., 629, S. C., 5 Sup. C't Rep., 566, is cited as authority. That case decides that where an act directs the Secretary of the Interior, upon the filing of a map of general route, to withdraw certain lands from "sale," the filing of the map has no further force than to carry into effect the law and does not operate as a withdrawal from homestead and pre-emption. *Expressio unius est exclusio alterius* was invoked; but here there was no express direction of withdrawal. The general powers of the Land Department were not limited. The withdrawal was in fact made. It was in existence and a public record in the offices at Washington at the time the act of 1871 was passed. Congress may be presumed to have acted with knowledge of this fact. If it had intended to stamp with the seal of disapprobation this act of the Land Department as a usurpation of authority it could easily have expressed that intent in clear and unmistakable terms. On the contrary, its language seems rather an approval of the action of that Department and to make a grant subject to the reservations created thereby. I can come to no other conclusion than that the withdrawal was valid and that the grant to the St. Paul & Pacific never had operative force within its limits.

The only remaining lands are those outside these withdrawal limits, but within the indemnity limits of the Northern Pacific. As to them but a word is necessary. No rights are acquired until selection. Ryan *v.* Railroad Co., 99 U. S., 382; Grinnell *v.*
419 Railroad Co., 103 U. S., 739.

No prior selection on the part of the Northern Pacific is shown. Its claim that as the holder of the prior grant it has a reasonable time in which to make a selection if good in law, which I doubt, is not sustained by the facts.

A decree will therefore be entered in favor of the Northern Pacific

Railroad Company as to all lands within its place limits, and also within the limits of the withdrawal of Oct. 12th, 1870, and dismissing the supplemental bill of the St. Paul, Minneapolis and Manitoba Railway Company, at its costs.

The case will be referred to a master to report the lands coming within the limits named.

420 And afterwards, to wit, on the 17th day of March, A. D 1886, the following interlocutory decree was filed and entered of record in Term Minutes "G," page 194, in the words and figures following:

Interlocutory Decree.

421 In the Circuit Court of the United States for the District of Minnesota. In Equity.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff,
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY and Others, Defendants.

This cause having come on to be heard before the court at the term thereof beginning on the third Monday of June, A. D. 1885,

and the same having been argued by counsel and taken under advisement by the court, and the court, after having fully advised itself in the premises, having made and filed its decision and opinion in said cause—

Now, therefore, it is hereby ordered and directed that Benjamin J. Shipman, Esq., one of the masters in chancery of this court, ascertain and report to the court a list of the lands awarded to the plaintiff herein by the said decision and opinion, to the end that a final decree in this cause may be entered in accordance with the said decision and opinion.

DAVID J. BREWER,
Circuit Judge.

(Entered Term Minutes "G," page 194.)

Endorsed: "Filed M'ch 17, 1886. O. B. Hillis, cl'k."

422 And afterwards, to wit, on the 8th day of December, A. D. 1886, the master filed his report herein in the words and figures following, viz:

Master's Report.

423 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY *et al.*, Respondents.

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424 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*, Defendants.

To the honorable the judges of the circuit court of the United States for the district of Minnesota, in chancery sitting:

The undersigned, a master in chancery of said court, to whom the above-entitled action was referred by order of said court, entered therein on the 3rd day of March, A. D. 1886, to report the lands coming within the limits named in the opinion of said court, would respectfully report as follows:

That the parties above named duly appeared before me, by
425 their respective counsel, and certain proceedings were thereupon had, as will more fully appear by Schedule "A" of this report, hereto annexed and made a part hereof.

That upon the evidence offered before me I find — in the opinion of the court herein to be as hereinafter stated, the lists of said lands being contained in certain schedules hereto annexed and made a part of this report and marked "B," "C," and "D," respectively, and comprising all lands situated within the 20-mile or place limits of the Northern Pacific railroad, and also within the thirty and forty mile indemnity limits of said road, so far as the same fall within the limits of the withdrawal of October 12th, 1870, and so far as the same are included in the schedule annexed to the complaint herein, as corrected by Complainant's Ex. No. 68 (see page 27 of additional testimony of Complainant's Ex. "T" of master's

report), and by Complainant's Exhibit No. 69 (see pages 27 and 28 of Exhibit "T" of master's report), referred to in the testimony of M. L. Knowlton (see pages 10 and 11 of Exhibit "T" of master's report).

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Said Schedules "B," "C," "D" contain all lands which are situated as above and also within the limits of the St. P. and P. R. R., now the St. P., M. & M. R'y, and are as follows, to wit:

SCHEDULE "B."

"List of lands mentioned in Schedule "A" of lands annexed to complaint and situated within 20-mile or place limits of Northern Pacific R. R. and within limits of St. P. and P. R. R., now St. P., M. & M. R'y."

SCHEDULE "C."

"List of lands mentioned in Schedule "A" of lands annexed to complaint, situated within 30-mile indemnity limits of Northern Pacific R. R., within limits of withdrawal of October 12th, 1870, and within limits of St. P. and P. R. R., now St. P., M. & M. R'y."

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SCHEDULE "D."

List of lands mentioned in Schedule "A" of lands annexed to complaint and situated within 40-mile indemnity limits of Northern Pacific R. R., within limits of withdrawal of October 12th, 1870, and within limits of St. P. & P. R. R., now St. P., M. & M. R'y.

The above schedules include all lands contained within the limits named, in the opinion of this court herein, which are mentioned in the schedule annexed to the complaint in this action, as corrected above, and which are situated within the limits of the grant to the St. P. & P. R. R., now known as the St. P., M. & M. R'y. Upon the hearing before the master the objection was made by counsel for respondents (see Exhibit "A" of this report, pages 14 and 15) that the master should not consider or report on any lands outside the place limits of the Northern Pacific R. R. unless said lands were shown to have been selected by that company prior to the filing of the complaint in this action March 15th, 1875, and prior to the definite location of the line of the St. Paul and Pacific railroad, if within the ten-mile limits of that company, or prior to selection by that company, if within its twenty-mile limits.

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No proof has been offered by respondents either as to the time of the definite location of the St. Paul and Pacific railroad or as to selections by that company of lands within its 20-mile limits, and the decision of this court is that the grant to that company never had operative force within the limits of the withdrawal of October 12th, 1870, and directs a decree in favor of complainant for all lands within its place limits and also within the limits of this withdrawal. All lands, therefore, within this withdrawal, whether falling within

the place limits or the indemnity limits of complainant, are
429 covered by the terms of the decision, and I therefore report the same as shown by Schedules "C" and "D" above mentioned.

I further report the lands situated within the twenty-mile or place limits of the Northern Pacific railroad, which are not included in the schedule of lands annexed to the complaint herein and which are also located within the limits of the St. P. & P. R. R., the present St. Paul, Minneapolis and Manitoba railway. The list of these lands is contained in Schedule "E," hereto annexed and made a part of this report.

It is objected on the part of the respondents that the master should not consider or report upon any lands "not included in the schedule annexed to the bill of complaint as corrected by the testimony of M. L. Knowlton." The opinion of the court directs the master to report "the lands coming within the limits named"—*i. e.*, the place limits and limits of withdrawal of October 12th, 1870, of the
430 Northern Pacific R. R.—and does not in terms restrict him to a consideration of the lands mentioned in the complaint alone. I therefore report these lands as shown in Schedule "E" as above, subject to the objection of respondents as given.

I further report, for the reasons last above given, the lands coming within the thirty and forty mile indemnity limits of the Northern Pacific railroad, which are situated within the limits of the withdrawal of October 12th, 1870, but which are not included in the schedule annexed to the complaint in this action. These lands are shown in Schedules "F" and "G," respectively, hereto annexed and made part of this report. To this the same objection is made by respondent's counsel as last above stated, and I therefore report these lands by request of counsel for complainants, subject to the objections as noted.

431 Upon these schedules, as upon Schedules "C" and "D," above mentioned, are noted in red ink the selections of lands made by the Northern Pacific Railroad Company, as more fully shown by certain lists of selections filed with the master and marked Schedules "M," "P," and "Q," which are here filed in court and referred to as part of this report.

I further report, in Schedules "H" and "I" hereto annexed, the lands lying within the 30 and 40 mile indemnity limits of the Northern Pacific railroad and the limits of the St. P. & P. R. R., now the St. Paul, Minneapolis and Manitoba railway, and which are included in the schedule of lands annexed to the complaint, but which are not within the limits of the withdrawal of October 12th, 1870.

And in Schedules "K" and "L," hereto annexed, I report the remaining lands within the limits last above named, which
432 are *within* included in the schedule annexed to the complaint nor within the limits of the withdrawal of October 12th, 1870.

Upon these Schedules "H," "I," "K," and "L" are noted in red ink the selections made by the Northern Pacific Railroad Company,

as will more fully appear by "Schedules 'N,' 'O,' 'R,' & 'S' of master's report," filed with the master, and which are here filed in court and referred to as part of this report. The lands and selections referred to in the above-mentioned four schedules are disputed, subject to the objections of counsel for respondents, as stated in Schedule "A" of this report, and at the request of counsel for complainant.

I finally report that Schedule "A," hereto annexed, contains a full statement of all proceedings before me in this matter, and that in the Schedules "B" to "L," inclusive, with the schedules of selections above referred to, are contained a full statement of all
433 & 434 lands situated within the conflicting land grants of the Northern Pacific Railroad Company and the present St. Paul, Minneapolis and Manitoba Railway Company, formerly the Saint Paul and Pacific Railroad Company, *are* of the respondents herein, as shown by the map, marked "Complainant's Exhibit 1," heretofore filed in said cause and offered in evidence before the master, as stated in Schedule "A" of this report, and by the schedule of lands annexed to the complaint in said cause, as corrected by Complainant's Exhibits Nos. 68 & 69; with selections of lands within the indemnity limits of the complainant's road, as shown by the schedules of sections hereinabove referred to.

That my draft report was duly served upon counsel for the respective parties hereto, and thereafter counsel for respondents duly filed with me their exceptions thereto, which are herewith filed in court and referred to as part of this report.

That upon considering such exceptions as to schedules "C," "D," "E," "F," & "G," being the first six of said exceptions,
435 I report the said schedules, as hereinabove stated, for the reasons given and in the manner above stated.

That upon considering the seventh exception as to schedules of lands within the 30 and 40 mile indemnity limits of the Northern Pacific Railroad Company, so far as the said exception refers to lands in the said limits outside of the withdrawal of October 12th, 1870, I report the same in Schedules "H," "I," "K," and "L," as above stated, by request of counsel for complainants and subject to the objection and exceptions of counsel for respondents for the ruling of this court thereon.

That, upon considering the eighth exception of respondents to the lands reported as selected in said four schedules last above mentioned I report the same by request of the counsel for complainants and subject to the objections of counsel for respondents, as
436 above stated, for the ruling of this court thereon.

That upon considering the ninth and tenth exceptions of said defendants I report that the evidence offered before me as shown by Schedule "A" of this report was received by me as therein stated, and that this report is based thereon.

All which is respectfully submitted.

B. J. SHIPMAN, *Master.*

St. Paul, Minn., Nov. 3rd, 1886.

Master's fees, $400.00.

437 United States Circuit Court for the District of Minn.

Term Minutes, December Term, A. D. 1885.

MARCH 3RD, 1886.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

This cause having been heretofore fully heard upon the pleadings, final proofs, and arguments of counsel, duly submitted, and by the court taken under advisement, now the court, after due consideration thereof and being fully advised in the premises, announces its decision concerning the same and files said decision in writing. Pursuant to said decision it is considered, ordered, and adjudged by the court that a decree be entered "in favor of the complainant, The Northern Pacific Railroad Company, as to all lands within its place limits and also within the limits of the withdrawal of October 12th, 1870, and dismissing the supplemental bill of the St. Paul,
438 Minneapolis and Manitoba Railway Company at its costs, and that this cause be referred to a master to report the lands coming within the limits named."

UNITED STATES OF AMERICA, *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that the foregoing is a true copy of the order for decree in the cause therein named as fully as the same appears of record in my office.

Witness my hand as clerk and the seal of said court. Done at office, in Saint Paul, Minnesota, this 17th day of May, A. D. 1886.

OSCAR B. HILLIS, *Clerk*,
(Seal U. S. C. C.) By L. P. RICHARDSON, *Dep.*

Schedule "A" of Master's Report. B. J. Shipman, Master.

439 U. S. Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

It is stipulated that the hearing before B. J. Shipman, Esq., the master in this cause under the interlocutory decree herein, do proceed before said master, at his office, in the Drake building, St. Paul, on the 1st day of June, 1886, at 10 o'clock a. m.

W. P. CLOUGH,
Solicitor for Pl'ff.
R. B. GALUSHA,
Solicitor for Defendants.

Circuit Court of the United States in and for the District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*, Respondents.

I, B. J. Shipman, a master in chancery of said court, to whom the above-entitled cause was referred by order of said court entered at the December term thereof, A. D. 1885, and on the 3rd day of March, A. D. 1886, to ascertain the lands contained within the limits mentioned and described in the decision of said court in said cause and report the same to this court, do hereby certify that pursuant to said order of reference said cause was duly brought before me upon a stipulation of counsel for the respective parties thereto on
441 Tuesday, the 1st day of June, 1886, at 10 o'clock a. m., for hearing and taking testimony therein, and that at said time said respondents appeared before me at my office, No. 354 Drake block, in the city of Saint Paul, in said district, by their counsel, George B. Young, Esq., and S. U. Pinney, Esq., and said complainants not appearing I therefore, by consent of all parties, continued said hearing until Monday, June 14th, 1886, at 10 o'clock a. m., at the same place.

Dated Saint Paul, Minnesota, June 1st, A. D. 1886.

B. J. SHIPMAN, *Master.*

MONDAY, *June 14th*, 1886—10 a. m.

I hereby certify that pursuant to the above adjournment the parties above named appeared before me at my office, No. 354 Drake block, Saint Paul, Minnesota, at the above date and hour, said
442 complainants appearing by W. P. Clough, Esq., their attorney, and said respondents by George B. Young and S. U. Pinney, Esq., their attorneys, and thereupon the hearing of said matter was continued until 2 o'clock p. m. of said day, at the office of the clerk of the U. S. circuit court.

JUNE 14TH, 1886—2 o'clock p. m.

Said parties appeared as above at the above-named time and place and thereupon the following proceedings were had:

Complainants offer in evidence the maps heretofore used as exhibits in said cause, to be used by the master in ascertaining the lands in controversy, as follows, to wit:

Complainants' Exhibits Nos. 1, 2, 3, 4, 27, and 29.

443 The respondents objected to the admission of Ex. No. 2, the same being an amended map of the line of the Northern Pacific R. R. in Minnesota, for the reason that there is no definite and certain point of commencement of the line of said road, and that said map has no sufficient certificate attached and is not under the seal of the R. R. Co., and that there is nothing to show that there was ever any actual survey or to show its definite location upon the earth's surface or with reference to any line upon the earth's surface.

The same objection was made to the admission of Exhibit No. 4.

The respondents also objected to the admission of Exhibit No. 3, for the reason that it purports to be a map of but a part of the line of road and is not a part of the entire line.

All said maps were received in evidence by the master and are hereby referred to as part of this report.

444 Complainants also offered in evidence the following exhibits heretofore filed in this case, according to the printed testimony of complainants herein, as follows:

Exhibit "A" of Exhibit 5.—Letter of the Secretary of the Interior of August 13th, 1870 (on page 54 of complainant's testimony).

Exhibit "B" of Exhibit 5.—Letter of the Secretary of the Interior of October 12th, 1870 (on page 55 of complainant's testimony).

Exhibit "C" of Exhibit 5.—Letter of chief engineer of Northern Pacific R. R. of October 1st, 1870 (on pages 55 and 58 of complainant's testimony).

Exhibit "D" of Exhibit 5.—Letter of the Secretary of the Interior of November 20th, 1871 (on page 59 of complainant's testimony).

Exhibit "E" of Exhibit 5.—Letter of the acting Secretary
445 of the Interior of January 7th, 1873 (on pages 59, 60 of complainant's testimony).

Exhibit 30.—Letter of the Commissioner of the General Land Office of Dec. 26th, 1871 (on pages 144–149 of complainant's testimony).

Exhibit 31.—Letter of the Commissioner of the General Land Office of Dec. 26th, 1871 (on pages 149 and 155 of complainant's testimony).

All which were received by the master.

Complainant's counsel requests the master to report, in addition to the lands coming within the limits named—to wit, the place or twenty-mile limits of the Northern Pacific railroad and the limits of the withdrawal of October 12th, 1870, and also included in the schedule annexed to the complaint in said cause—all other lands within those limits not included in said schedule and within the thirty and forty mile indemnity limits of the Northern Pacific
446 railroad, but not falling within the limits named in the opinion of the court in said cause.

To this request and to the action of the master thereon the respondents interposed the following objections:

1st. Counsel for respondents object and insist that the master shall not consider or report upon any lands not included in the schedule annexed to the bill of complaint as corrected by the testimony of M. L. Knowlton.

2nd. That the master shall not consider or report on any lands outside of the place limits of the Northern Pacific Railroad Company unless they are shown to have been selected by said company prior to the filing of the complaint in this action, to wit, March 15th, 1875, and prior to the definite location of the line of the St. Paul and Pacific railroad, if within the ten-mile limits of that
447 company, or prior to selection by that company if within its 20-mile limits.

3rd. That the master shall not consider or report on any lands between the 30 and 40 mile limits of the Northern Pacific railroad unless, in addition to the proof required in the second objection above noted, it is also shown that the Northern Pacific Railroad Company had a right to select such lands as indemnity under the conditions of the joint resolution of Congress of 1870.

4th. That the master shall not receive or consider any evidence of selections by the Northern Pacific Railroad Company subsequent to the filing of the complaint in this action in the State court, March 15th, 1875.

No further testimony being offered, the hearing was thereupon closed.

B. J. SHIPMAN, *Master.*

448 SCHEDULE B.

List of lands mentioned in Schedule "A" of lands annexed to complaint and situated within 20-mile or place limits of Northern Pacific R. R. and within limits of St. P. & P. R. R., now St. P., M. & M. R'y.

	Description.	Sect.	Town.	Range.
	N ½ of n e ¼	21	131	36
	S w ¼ of n e ¼, s e ¼ of n w ¼	33	133	38
	All of	1	"	41
	"	1	134	"
	N e ¼, n w ¼ of s e ¼, s e ¼ of s e ¼, and lots 3, 4, 5, 6, 7, 8, 9, & 10	3	"	"
	E ½ of s e ¼, lots 1, 2, 3, 4, & 5	5	"	"
	All of	7	"	"
	N w ¼, n w ¼ of s w ¼, s e ¼ of s w ¼, s e ¼, lots 2 & 3	9	"	"
	N ½, n w ¼ of s w ¼, lots 2, 3, 4, & 5	11	"	"
	E ½ of n e ¼, s w ¼, n ½ of s e ¼, lots 1, 2, & 3	13	"	"
	N ½ of n w ¼, s ½ of s w ¼, s w ¼ of s e ¼, and lots 1, 2, 3, 4, 5, 6, 7, & 8	15	"	"
449	All of	17	134	41
	E ½ of n e ¼	19	"	"
	All of	21	"	"
	N ½ of n e ¼, s ½ of n w ¼, s w ¼, s w ¼ of s e ¼, lot 1	23	"	"
	W ½ of n w ¼, s ½, lots 1, 2	25	"	"
	All of	27	"	"
	N e ¼ of n e ¼	33	"	"
	All of	35	"	"
	All of sections 5, 7, & 9	--	135	41
	Lot 1	11	"	"
	S w ¼	13	"	"
	All of sections 15, 17, 19, 21	--	"	"
	N ½, w ½ of s w ¼, n e ¼ of s w ¼, n e ¼ of s e ¼, E ½ of s e ¼	23	"	"

Schedule B—Continued.

	Description.	Sect.	Town.	Range.
	All of	25	135	41
	E ½, e ½ of w ½, n w ¼ of n w ¼	27	"	"
	All of	29	"	"
	N ½, E ½ of s w ¼, lots 4, 5, 6, 7, & 8	31	"	"
	All of	33	"	"
	Lots 3, 4	35	"	"
	All of	1	134	42
	E ½ of n e ¼	3	"	"
450	Lot 8	11	134	42
	E ½ of n e ¼	13	"	"
	All of secs 1, 3, & 5	1	135	42
	N e ¼, n ½ of s e ¼	7	"	"
	N e ¼, w ½, w ½ of s e ¼	9	"	"
	All of sections 11, 13, & 15	--	"	"
	E ½, e ½ of n w ¼, e ½ of s w ¼, n w ¼ of n w ¼	17	"	"
	All of sections 21, 23, 25, 27	--	"	"
	E ½ of n e ¼	33	"	"
	All of	35	"	"
	" "	3	136	"
	Lots 1, 2, 3, 4, 5, & 6	5	"	"
	All of sections 7, 9, 11, 13, & 15	--	"	"
	W ½ of n e ¼, n w ¼, s ½	17	"	"
	All of sections 19, 23, & 25	--	"	"
	S ½ of s w ¼, s ½ of s e ¼, lots 1, 2, 3, 4, & 5	27	136	42
	All of sections 29, 31, 33, & 35	--	"	"
451	S e ¼ of n e ¼, w ½ of n e ¼, e ½ of n w ¼, lots 7 & 8	5	137	42
	All of	7	"	"
	S ½ of s e ¼, lots 3, 4, & 5	9	"	"
	W ½ of w ½	15	"	"
	All of	17	"	"
	N e ¼, w ½, n ½ of s e ¼	19	"	"
	All of	21	"	"
	" "	27	"	"
	Lots 1, 2, & 4	29	"	"
	N ½, s e ¼	31	"	"
	All of	33	"	"
	S e ¼ of n e ¼, w ½ of n e ¼, s ½, n w ¼	35	"	"
	S ½ of n e ¼, s e ¼, w ½	19	138	42
	S ½ of s w ¼, s w ¼ of s e ¼	29	"	"
	N ½, n w ¼ of s w ¼, s e ¼	31	"	"
	N ½ of n e ¼	1	135	43
	N ½, n ½ of s w ¼, n ½ of s e ¼	1	136	43
	All of	3	"	"
	S w ¼ of n e ¼, s w ¼ of s w ¼, s e ¼ of s e ¼, lots 1, 2, & 3	5	"	"
452	S e ¼ of n w ¼, s w ¼ of n w ¼, s w ¼	7	136	43
	S ½	9	"	"

Schedule B—Continued.

	Description.	Sect.	Town.	Range.
	Lots 1, 2, 3, 4, & 5	11	136	43
	All of	13	"	"
	" "	15	"	"
	N w ¼, n ½ of s w ¼	17	"	"
	S e ¼ of n e ¼	21	"	"
	E ½, e ½ of n w ¼, e ½ of s w ¼	23	136	43
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, s ½	25	"	"
	N e ¼, e ½ of n w ¼, lots 6 & 7	1	137	"
	N ½, s e ¼, e ½ of s w ¼, n w ¼ of s w ¼	3	"	"
	S e ¼ of n e ¼, w ½ of n e ¼, n e ¼ of s e ¼, n w ¼, n w ¼ of s w ¼	5	"	"
	All of	7	"	"
	S e ¼ of n e ¼, w ½ of n e ¼, e ½ of n w ¼, s w ¼ of n w ¼, s ½	9	"	"
	Lots 1, 3, 4, & s ½ of s w ¼, s w ¼ of s e ¼	11	"	"
	All of sections 13, 15, 17, & 19	--	"	"
453	N ½, n w ¼ of s w ¼, e ½ of s w ¼, s e ¼	21	137	43
	All of	23	"	"
	All of	25	"	"
	S ½ of n e ¼, n w ¼, s ½	27	"	"
	S e ¼ of n e ¼, n w ¼ of n e ¼, n w ¼ of n w ¼, lots 1, 2, 3, 4, 5, & 6	29	"	"
	N e ¼	31	"	"
	E ½ of n w ¼, n w ¼ of n w ¼, s w ¼ of s w ¼, e ½ of s w ¼, s e ¼	33	"	"
	All of	35	"	"
	W ½	1	138	"
	All of secs 3, 5, 7, 9, 11, 15, & 17	--	"	"
	N ½ of n e ¼, s ½	19	"	"
	All of sections 21 & 23	--	"	"
	S w ¼, s e ¼ of s e ¼	25	"	"
	S w ¼ of n w ¼, lot 4	27	"	"
	All of sections 29 & 31, 33, & 35	--	"	"
	All	5	139	"
	E ½	7	"	"
	W ½ of n e ¼, w ½ of s e ¼, w ½	9	139	"
454	W ½	15	139	43
	S ½, lots 1, 4, 5, 6, 7, 8, & 9	17	"	"
	All of	19	"	"
	W ½ of n e ¼, w ½, lots 3, 5, & 6	21	"	"
	Lots 3, 4, 5, 6, 7, 8, 9, & 10	27	"	"
	N e ¼ of n e ¼, n w ¼ of n w ¼, s e ¼ of s e ¼, lots 1, 2, 3, 5, 6, 7, & 8	29	"	"
	All of sections 31 & 33	--	"	"
	N w ¼, s ½	35	"	"
	W ½	7	140	43
	S ½ of n e ¼, n w ¼, s ½	19	"	"
	W ½ of s w ¼, lot 7	29	"	"

Schedule B—Continued.

	Description.	Sect.	Town.	Range.
	S ½ of n e ¼, s ½ of n w ¼, s ½	31	140	43
	Lots 5, 6, 7, s ½ of s e ¼	1	136	44
	All of sections 1, 3, 11, & 13	--	137	44
	E ½	23	"	"
	E ½, e ½ of n w ¼, e ½ of s w ¼	25	"	"
	All of	1	138	44
	N e ¼, s ½, lots 3 & 10	3	"	"
	All of sections 5, 7, 9, 11, 13, & 15	--	"	"
	N ½, n ½ of s w ¼, s e ¼	17	"	"
	All of sections 21, 23, 25, & 27	--	"	"
	E ½ of	33	"	"
	All of	35	"	"
455	S w ¼ of n e ¼, w ½, lots 1, 2, 5, & 7	1	139	44
	All of sections 3, 5, 7, & 9	--	"	"
	S w ¼ of n e ¼, n w ¼ of s e ¼, w ½, lots 1, 2, 4, 5, 6, 7, 8, & 9	11	"	"
	All of sections 13, 15, 17, 19, 21, 23, & 25	--	"	"
	S ½ of n e ¼, w ½, s e ¼	27	139	44
	All of sections 29, 31, 33, & 35	--	"	"
	S ½, lots 2 & 3	1	140	44
	All of sections 5, 7, & 9	--	"	"
	E ½	11	"	"
	All of sections 13, 15, & 17	--	"	"
	N e ¼, e ½ of n w ¼, n w ¼ of n w ¼, s ½	19	"	"
	All of sections 21, 23, 25, 27, & 29	--	"	"
	N ½ of s w ¼, s e ¼ of s w ¼	23	141	44
	All of sections 1 & 3	--	138	45
	S ½, n w ¼, s w ¼ of n e ¼	5	"	"
	All of	7	"	"
	W ½, n e ¼, w ½ of s e ¼, s e ¼ of s e ¼	9	"	"
456	All of secs 11 & 13	--	138	45
	N e ¼ of n e ¼, w ½ of n e ¼, n w ¼, s ½	15	"	"
	All of secs 17, 19, & 21	--	"	"
	N w ¼, w ½ of n e ¼	23	"	"
	N ½	29	"	"
	All of secs 1 & 3	--	139	45
	N e ¼, e ½ of n w ¼, s ½	5	"	"
	All of secs 7, 9, 11, 13, & 15	--	"	"
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, s ½	17	"	"
	All of secs 19 & 21	--	"	"
	N ½ of n e ¼, s w ¼ of n e ¼, n ½ of s e ¼, w ½, lots 1, 2	23	"	"
	All of sections 25, 27, 29, 31, 33, & 35			
	All of secs 5 & 7	--	140	45
	W ½ of n w ¼, w ½ of s w ¼	9	"	"
	All of secs 17 & 19	--	"	"

Schedule B—Continued.

	Description.	Sect:	Town.	Range.
	W ½ of n e ¼, w ½ of s e ¼, w ½	21	140	45
457	All of secs 29 & 31	--	140	45
	W ½ of n e ¼, w ½ of s e ¼, w ½	33	"	"
	W ½ of n e ¼, w ½ of s e ¼, w ½	5	141	45
	All of	7	"	"
	W ½ of n w ¼, w ½ of s w ¼	9	"	"
	All of secs 17 & 19	--	"	"
	W ½ of n w ¼, w ½ of s w ¼	21	"	"
	All of secs 29 & 31	--	"	"
	W ½ of n w ¼, w ½ of s w ¼	33	"	"
	W ½ of n w ¼, w ½ of s w ¼	5	142	45
	All of	7	"	"
	W ½ of n e ¼, w ½ of s e ¼, w ½	17	"	"
	All of	19	"	"
	W ½ of n e ¼, w ½ of s e ¼, w ½	29	"	"
	All of	31	"	"
	S ½ of n e ¼, s ½ of n w ¼, s ½	31	143	45
	All of secs 1, 3, & 5	--	138	46
	E ½, n e ¼ of n w ¼, s w ¼ of s w ¼, e ½ of s w ¼	7	"	"
458	All of sections 9, 11, & 13	--	138	46
	N ½, w ½ of s w ¼, n e ¼ of s w ¼, e ½ of s e ¼	15	"	"
	All of secs 17, 19, 21, 23, 25, 27, 29, 31, & 33	--	"	"
	N ½	35	"	"
	All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35	--	139	46
	All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, & 33	--	140	46
	N ½ of n e ¼, n e ¼ of n w ¼, s w ¼ of n w ¼, s w ¼, s w ¼ of s e ¼	35	"	"
	All of sections 1, 3, 5, 7, 9, 11, & 13	--	141	46
	S e ¼ of n e ¼, w ½ of n e ¼, n w ¼, s ½	15	"	"
	All of sections 17, 19, 21, 23, 25, 27, 29, 31, 33, 35	--	"	"
	S e ¼ of s e ¼, w ½ of s e ¼, s w ¼	1	142	"
	All of sections 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23	--	"	"
	E ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼, w ½ of n w ¼, w ½ of s w ¼, s w ¼ of s e ¼, e ½ of s e ¼	25	"	"
459	All of secs 27, 29, 31, 33, & 35	--	142	46
	S ½ of n w ¼, s ½ of n e ¼, s ½	31	143	"
	S ½ of n w ¼, s ½ of n e ¼, s ½	33	"	"
	S ½ of n w ¼, s w ¼ of n e ¼, n w ¼ of s w ¼	35	"	"
	All of sections 1, 3, 5, 7, 9, 11, 15, 17	--	136	47
	N ½ of n w ¼, n ½ of n e ¼	19	"	"
	N ½ of n w ¼, n w ¼ of n e ¼	21	"	"
	N ½ of n w ¼, n ½ of n e ¼	23	"	"

Schedule B—Continued.

	Description.	Sect.	Town.	Range.
	All of sections 1, 3, 5, 7, 9, 11	--	138	47
	S ½ of n e ¼, n w ¼, s ½	13	"	"
	All of sections 15, 17, 19, & 21	"	"	"
	N e ¼, w ½, w ½ of s e ¼, n e ¼ of s e ¼	23	"	"
	All of secs 25, 27, 29, 31, 33, & 35	--	"	"
	" " 1, 3, 5, 7, 9, 11, 13, 15, 17	--	141	47
	N ½ of n e ¼, n ½ of n w ½	19	"	"
	" "	21	"	"
	" "	23	"	"
	All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35	--	142	47
460	S ½ of n w ¼, s ½ of n e ¼, s ½	31	143	47
	S ½ of n w ¼, s ½ of n e ¼, s ½	33	"	"
	S ½ of n w ¼, s ½ of n e ¼, s ½	35	"	"
	N e ¼	21	141	48
	N ½	1	142	48
	All of	3	"	"
	E ½	9	"	"
	All of	11	"	"
	"	13	"	"
	E ½	15	"	"
	All of	23	"	"
	S ½ of n e ¼, s ½ of n w ¼, s ½	35	"	"
	(See Schedule "C")	--	143	"
	S ½ of n e ¼, s ½ of n w ¼, s ½	35	"	"

461 SCHEDULE "C."

List of lands mentioned in Schedule "A" of lands annexed to complaint, situated within 30-mile indemnity limits of Northern Pacific R. R. Co., within limits of withdrawal of October 12th, 1870, and within limits of St. Paul and P. R. R., now St. P., M. & M. R'y.

Description	Section.	Township.	Range.	N. P. R. R. selections.
Lot 8	3	132	39	All.
N ½, n ½ of s w ¼, n w ¼ of s e ¼, e ½ of s e ¼	5	"	"	"
All of	7	"	"	"
"	9	"	"	"
S w ¼ of n e ¼, s ½ of n w ¼, s w ¼, w ½ of s e ¼	11	"	"	As given.
N w ¼, n ½ of s w ¼	5	132	40	All.
N e ¼ of n e ¼	7	"	"	"
E ½ of n w ¼, n w ¼ of s w ¼, w ½ of n w ¼, lots 3 & 4	11	"	"	All as given.

Schedule "C"—Continued.

	Description.	Section.	Township.	Range.	N. P. R. R. selections.
	W ½	19	133	40	All as given.
	Lot 6	21	"	"	All as given.
	" 3	29	"	"	All.
	" 8	31	"	"	"
	Lots 1, 2, & 6	33	"	"	"
462	Lots 2, 5, & 6, n w ¼, s ½	3	133	41	All.
	All of	5	"	"	"
	Lots 1, 2, 3, 4, 5	9	"	"	"
	All of	11	"	"	"
	"	13	"	"	"
	N ½, lots 3, 6, 7, & 8	15	"	"	"
	N ½, e ½ of s w ¼, lots 1 & 2	23	"	"	"
	Lots 1, 2, 3, 4, 5, 6, 7, & 8	25	"	"	"
	S ½, n w ¼, w ½ of n e ¼	19	134	"	"
	N e ¼, lots 2, 3, 4, 5, 6, & 9	29	"	"	"
	Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, s e ¼ of s e ¼	31	"	"	"
	S w ¼, e ½ of n w ¼, n w ¼ of n e ¼, lots 1, 2, 3, 4, 5, 6, 7, 8, & 9	33	"	"	"
	W ½, s e ¼, w ½ of n e ¼	3	"	42	"
	All of	5	"	"	"
	"	9	"	"	"
	W ½, s ½ of s e ¼, lots 2, 6, 7, & 8	11	"	"	"
	W ½, s e ¼, w ½ of n e ¼	13	"	"	"
	All of secs 15, 23, & 25	--	--	--	All selected.
	W ½, s ½ of s e ¼	7	135	42	"
	W ½ of s w ¼	17	"	"	"
	S e ¼ of n e ¼, w ½ of n e ¼, n w ¼, s w ¼ of s w ¼, e ½ of s w ¼, s e ¼	19	"	"	"
463	All of	29	135	42	All.
	N ½, e ½ of s w ¼, s e ¼	31	"	"	"
	W ½, w ½ of n e ¼, s e ¼	33	"	"	"
	W ½, s e ¼, s ½ of n e ¼	1	135	43	"
	N e ¼, n w ¼ of n w ¼, w ½ of s e ¼, n e ¼ of s e ¼	3	"	"	"
	All of	11	"	"	"
	N e ¼, w ½, w ½ of s e ¼, n e ¼ of s e ¼	13	"	"	"
	N e ¼ of n w ¼, lots 1 & 2	23	"	"	"
	N ½, e ½ of s e ¼	25	"	"	"
	N e ¼ of n e ¼, lots 4, 5, 7, & 8	19	136	"	"
	S e ¼ of n w ¼, w ½ of n w ¼, w ½ of s e ¼, n e ¼ of s e ¼	21	"	"	"
	All of	27	"	"	"
	N e ¼ of n w ¼, n w ¼ of n e ¼	29	"	"	"

Schedule "C"—Continued.

	Description.	Section.	Township.	Range.	N. P. R. R. selections.
	E ½ of n e ¼, n w ¼ of n e ¼, n ½ of n w ¼, e ½ of s e ¼	33	136	43	All.
	N e ¼, w ½, w ½ of s e ¼, s e ¼ of s e ¼	35	136	43	"
	All of sections 3, 5, 7, 9, 11, 15, 17	--	143	44	All selected.
	N ½, n ½ of s w ¼, s e ¼	19	"	"	"
	N ½, n ½ of s w ¼, n ½ of s e ¼	21	"	"	"
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, n ½ of s w ¼, n ½ of s e ¼	23	"	"	N ½, n ½ of s ½.
464	All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23	--	143	45	All selected.
	N ½ of n e ¼, n ½ of n w ¼	25	"	"	All.
	N ½, n ½ of s e ¼, n ½ of s w ¼	27	"	"	"
	All of	29	"	"	"
	N ½ of n w ¼, n ½ of n e ¼	31	"	"	Lot 1.
	S ½ of n w ¼, s ½ of n e ¼, s ½	1	144	45	"
	S ½ of s w ¼, s ½ of s e ¼	3	"	"	"
	S ½ of n w ¼, s ½ of n e ¼, s ½	7	"	"	Lots 2, 3, 4.
	All of sections 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35	--	"	"	All selected.
	All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29	--	143	46	All selected.
	N ½ of n w ¼, n ½ of n e ¼	31	"	"	All.
	Do. do.	33	"	"	"
	Do. do.	35	"	"	"
	S ½ of n w ¼, S ½ of n e ¼, s ½	7	144	46	"
	Do. do.	9	"	"	"
	Do. do.	11	"	"	"
	Do. do.	13	"	"	"
	All of sections 15, 17, 19, 21, 23, 25	--	"	"	All selected.
	W ½ of s w ¼, s e ¼ of s w ¼, s w ¼ of s e ¼, e ½ of s e ¼, n ½	27	"	"	All.
	All of sections 29, 31, 33, & 35	--	"	"	All selected.
465	All of secs 1, 3, 5, 7 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, & 29	--	143	47	All selected. All.
	N ½ of n w ¼, n ½ of n e ¼	31	"	"	"
	N ½ of n w ¼, n ½ of n e ¼	33	"	"	"
	N ½ of n w ¼, n ½ of n e ¼	35	"	"	"
	S ½ of n w ¼, s ½ of n e ¼, s ½	7	144	47	"
	Do.	9	"	"	"
	Do.	11	"	"	"

Schedule "C"—Continued.

Description.	Section.	Township.	Range.	N. P. R. R. selections.
All of secs 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35	--	144	47	All.
All of	1	143	48	"
E ½, n w ¼	3	"	"	"
All of	21	"	"	"
S e ¼ of	23	"	"	"
All of	25	"	"	"
"	27	"	"	"
N E ¼, n e ¼ of n w ¼, n w ¼ of s e ¼, E ½ of s e ¼, s e ¼ of n w ¼	29	"	"	"
N ½ of n w ¼, n ½ of n e ¼	35	"	"	"
S ½ of n e ¼, s ½ of n w ¼, s ½	7	144	48	"
S ½ of n e ¼, s e ¼, s w ¼, s e ¼ of n w ¼	9	"	"	"
S ½ of n e ¼, s ½ of n w ¼, s ½	11	"	"	"
All of secs 13, 15, & 17	--	"	"	All selected.
E ½ of n e ¼, s w ¼ of n e ¼, n w ¼, s ½	19	"	"	"
All of secs 21, 23, 25, 27, 29, 31, 33, & 35	--	"	"	All selected.

466 SCHEDULE "D."

List of lands mentioned in Schedule "A" of lands annexed to complaint and situated within 40-mile indemnity limits of Northern Pacific R. R., within limits of withdrawal of Oct. 12th, 1870, and within limits of St. P. & P. R. R., now St. P., M. & M. R'y.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
All of sections 19, 21, 29, 31, & 33.	--	145	44	All of 19, 21, 29, 31, 33,
N ½ of n e ¼, n ½ of n w ¼	1	144	45	Lots 1, 2, 3. 4.
N ½, n ½ of s e ¼, s ½ of s w ¼	3	"	"	All.
All of	5	"	"	"
N ½ of n e ¼, n ½ of n w ¼	7	"	"	Lot 1.
All of secs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 33, 35	--	145	45	All selected.
All of sections 19, 21, 29, 31, & 33	--	146	45	"
" " 1, 3, & 5	--	144	46	"
N ½ of n e ¼, n ½ of n w ¼	7	"	"	All.
Do.	9	"	"	"
Do.	11	"	"	"

Schedule "D"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
	All of sections 1, 3, 5, 7, 9, 11 13, 15, 17, 19, 21, 23, 25, 27, 29	--	145	46	All selected.
467	N ½	31	145	46	All.
	All of	33	"	"	"
	"	35	"	"	"
	S ½ of n e ¼, s ½ of n w ¼, s ½	19	146	46	All selected.
	S ½ of n e ¼, s ½ of n w ¼, s ½	21	146	46	"
	S e ¼ of n e ¼, s w ¼ of n w ¼, s ½	23	"	"	"
	N ½ of n w ¼, s ½ of s w ¼, e ½	25	"	"	"
	All of sections 27, 29, 31, 33, & 35	--	"	"	All selected.
	All of secs 1, 3, & 5	--	144	47	All selected.
	N ½ of n w ¼, n ½ of n e ¼	7	"	"	N ½ of n e ¼, N e ¼ of n w ¼, n ½ of lot 1.
	Do. do.	9	"	"	All.
	Do. do.	11	"	"	"
	All of	1	145	"	"
	S w ¼ of n w ¼, s w ¼, s ½ of s e ¼	7	"	"	"
	All of	13	"	"	"
	N ½, N e ¼ of s w ¼, s e ¼	19	"	"	"
	All of secs 21, 23, 25, & 27	"	"	"	All selected.
468	E ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼	29	145	47	All.
	All of secs 33 & 35	--	"	"	All selected.
	S ½	35	146	"	All.
	All of secs 1, 3, & 5	--	144	48	All sel.
	N ½ of n w ¼, n ½ of n e ¼	7	"	"	All.
	N ½ of n e ¼, n e ¼ of n w ¼	9	"	"	"
	N ½ of n e ¼, n ½ of n w ¼	11	"	"	"
	All of	1	145	"	"
	N ½, n w ¼ of s w ¼, e ½ of s w ¼, s e ¼	3	"	"	"
	N ½, e ½ of s w ¼, s e ¼	7	"	"	"
	All of	13	"	"	"
	W ½ of n w ¼, s w ¼, s w ¼ of s e ¼	17	"	"	"
	E ½, e ½ of n w ¼, e ½ of s w ¼, lots 1 & 2	19	"	"	"
	All of secs 29 & 31				
	S ½ of n e ¼, s ½ of n w ¼, s ½	19	146	48	"
	Do.	21	"	"	"
	Do.	23	"	"	"
	All of sections 25, 27, 29, & 31	--	"	"	All selected.
	S w ¼, n ½	33	"	"	All.
	All of	35	"	"	"

Schedule "D"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
469	S w ¼ of n e ¼, lots 4 & 5	1	145	49	All.
	Lot 4	13	"	"	"
	Lot 1	23	"	"	"
	S e ¼ of n e ¼, n e ¼ of s e ¼, lots 2, 3, 4, 5	25	"	"	"
	Lots 1 & 2	23	146	49	"
	E ½ of n w ¼, e ½ of s w ¼, e ½, lots 1, 2, 3, 4	25	"	"	"
	Lots 1, 2, 3, & 4	35	"	"	"

470 SCHEDULE "E."

List of lands not in Schedule "A" of lands annexed to complaint and situated within 20-mile or place limits of Northern Pacific R. R. and within limits of St. P. & P. R. R., now St. Paul, M. & M. R'y.

	Description.	Sec.	Town.	Range.
	N ½, s e ¼ of s e ¼, s w ¼ of s e ¼	7	131	36
	Lots 5, 8, & 9	15	"	"
	N ½ of n w ¼, w ½ of n e ¼, n w ¼ of s e ¼, s w ¼	17	"	"
	S w ¼	23	"	"
	N w ¼, s ½ of s e ¼	25	"	"
	N ½ of n w ¼, s ½ of n e ¼, n ½ of s w ¼, s e ¼ of n w ¼, n ½ of s e ¼	1	"	37
	E ½, n e ¼ of n w ¼	3	"	"
	N ½ of n e ¼, s e ¼ of n e ¼	5	131	"
	S ½ of s w ¼	27	132	"
471	S e ¼, s w ¼, s ½ of n w ¼, s ½ of n e ¼	29	132	37
	N ½ & s e ¼	31	"	"
	N ½, s e ¼, n e ¼ of s w ¼, s e ¼ of s w ¼	33	"	"
	S w ¼, s ½ of n w ¼, s ½ of s e ¼	35	"	"
	S ½ of s ½	3	"	38
	All of	5	"	"
	"	7	"	"
	N ½, s e ¼, n ½ of s w ¼, s e ¼ of s w ¼	9	"	"
	S ½ of s w ¼, s ½ of s e ¼	11	"	"
	All of	15	"	"
	N ½, s w ¼, n ½ of s e ¼, s w ¼ of s e ¼	17	"	"
	N ½ of n e ¼	19	"	38
	All of sections 21, 23, & 25	--	"	"
	N ½, s e ¼, e ½ of s w ¼	27	"	"
	S ½ of n e ¼, n w ¼, lot 2	35	"	"
	S w ¼	19	133	38
	E ½ of s w ¼, s ½ of n w ¼, s w ¼ of s w ¼, s w ¼ of n e ¼	29	"	"
472	All of	1	132	39
	Lots 1, 2, 3, 4, 5, 6, & 7	3	"	"

Schedule "E"—Continued.

Description.	Sec.	Town.	Range.
N ½ of n w ¼, n ½ of n e ¼, s e ¼ of n e ¼, e ½ of s e ¼	11	132	39
E ½ of n e ¼, n e ¼ of s e ¼	13	"	"
N w ¼ of n w ¼	3	133	39
S w ¼ of n e ¼	5	"	"
Lots 1, 2, 3, 4	7	"	"
N e ¼ of n e ¼, w ½ of n e ¼	9	"	"
W ½ of s w ¼	11	"	"
N e ¼, e ½ of n w ¼, s w ¼ of n w ¼	15	"	"
Lot 5, e ½ of n e ¼	19	"	"
Lots 1, 3, n w ¼ of s w ¼	21	"	"
N e ¼ of n e ¼, n e ¼ of s e ¼, lots 2, 3, 4, 6, 7, 8	23	"	"
Lot 1	25	"	"
" 1	29	"	"
All of lots 1, 2, 3, 4, s w ¼ of s e ¼, n ½ of s w ¼, s w ¼ of n w ¼	33	"	"
Lots 1, 2, 3, 4	35	"	"
Lot 3, s e ¼ of n w ¼	33	134	39
Lot 3	1	133	40
473 Lots 1, 8, 9, 10	5	133	40
S e ¼ of n e ¼, e ½ of s w ¼, lots 1, 2, 3, 4	7	"	"
Lots 2 & 3	13	"	"
N e ¼ of n w ¼	25	"	"
S w ¼ of s w ¼	3	134	"
N w ¼ of n e ¼, s e ¼ of n e ¼, n ½ of n w ¼	5	"	"
S e ¼, n w ¼ of s w ¼, s e ¼ of n e ¼, lots 1, 2, 5	7	"	"
N e ¼, n ½ of n w ¼, w ½ of s e ¼, s ½ of n w ¼, s w ¼	9	"	"
Lot 2	13	"	"
S w ¼, e ½ of n w ¼, s w ¼ of n w ¼	15	"	"
W ½	17	"	"
Lots 1, 2, 3, 4, 5, 6, e ½ of s e ¼	19	"	"
N e ¼, w ½	21	"	"
W ¼ of n w ¼	23	"	"
N ½	29	"	"
S e ¼ of n w ¼, w ½ of n w ¼, n ½ of s w ¼, n ½ of n e ¼, s w ¼ of n e ¼, lots 1, 2, 4	31	"	"
474 N w ¼ of n w ¼, lots 2 & 6	19	135	40
Lot 1	29	"	"
All of	31	"	"
Lot 1	3	133	41
N e ¼ of s e ¼	3	134	41
W ½ of n e ¼, e ½ of n w ¼	13	"	"
S w ¼ of s e ¼, s e ¼ of s w ¼	23	135	41
All of	19	136	"
S ½, w ½ of n w ¼	29	"	"
All of	31	"	"

Schedule "E"—Continued.

Range.	Description.	Sec.	Town.	Range.
	S w ¼	33	136	41
39	S w ¼	31	137	42
"	W ½ of n w ¼, s e ¼ of n w ¼, n w ¼ of s e ¼	5	136	43
39	S e ¼ of s e ¼, lots 6 & 7	11	"	"
"	N w ¼ of s w ¼	23	139	43
"	Lots 4 & 5, s e ¼ of s e ¼	29	140	43
"	W ½	19	141	"
"	"	31	"	"
"	S e ¼ of s w ¼, lots 1, 2, 4	1	136	44
"	N e ¼, e ½ of n w ¼, n e ¼ of s e ¼	3	"	"
"	475 S ½, s ½ of n ½	5	136	44
"	S ½, lots 8 & 9	7	"	"
"	S ½ of n e ¼, n w ¼ of n e ¼, w ½, n ½ of s e ¼	9	"	"
"	E ½ of n e ¼	11	"	"
	N e ¼ of n e ¼, lots 1, 2, & 3	13	"	"
"	N ½	17	"	"
"	All of	5	137	"
39	E ½, e ½ of w ½, n w ¼ of n w ¼	7	"	"
40	All of secs 9, 15, & 17	"	"	"
40	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, s ½	19	"	"
"	All of	21	"	"
"	W ½	23	"	"
"	W ½ of s w ¼, w ½ of n w ¼	25	"	"
"	N e ¼ of n e ¼, n ½ of n w ¼, s w ¼ of n w ¼, s ½ of s ½	27	"	"
"	All of sections 29 & 31	--	"	"
"	476 N ½, n ½ of s w ¼, s e ¼ of s w ¼, n w ¼ of s e ¼	33	137	44
"	N ½, n ½ of s w ¼, s e ¼	35	"	"
"	S ½ of s w ¼ of	17	138	44
"	E ½ of n e ¼, s w ¼ of n e ¼, s w ¼ of s w ¼, e ½ of s w ¼, s e ¼	19	"	"
"	All of	29	"	"
"	W ½ of n w ¼, s e ¼ of s w ¼, e ½ of n e ¼, s w ¼ of n e ¼, s e ¼	31	"	"
"	W ½	33	"	"
"	All of	3	140	44
40	N w ¼	11	"	"
"	N ½ of n w ¼, s e ¼ of n w ¼, n e ¼ of s w ¼, e ½, s ½ of s w ¼, lots 2 & 3	31	"	"
"	All of	33	"	"
41	N ½ of n e ¼, w ½, s e ¼	35	"	"
41	All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, & 21	--	141	44
"	N ½, s e ¼	23	"	"
41	All of	25	"	"
"	W ½ of n w ¼, s ½	27	"	"
"	All of	29	"	"

Schedule "E"—Continued.

	Description.	Sec.	Town.	Range.
477	E ½ of n e ¼, s w ¼ of n e ¼, s w ¼ of n w ¼, s ½	31	141	44
	All of sections 33 & 35	--	"	"
	W ½	1	142	44
	All of sections 3, 5, 7, 9, 11	--	"	"
	W ½, w ½ of n e ¼, w ½ of s e ¼	13	"	"
	All of sects 15, 17, 19, 21, 23	--	"	"
	W ½, w ½ of n e ¼, w ½ of s e ¼	25	"	"
	All of secs 27, 29, 31, 33, & 35	--	"	"
	S ½ of s ½	21	143	44
	S ½ of s ½	23	"	"
	All of secs 27, 29, 31, & 33	--	"	"
	W ½, w ½ of e ½	35	"	"
	All of secs 1 & 3	--	136	45
	W ½	5	"	"
	All of secs 7, 9, & 11	--	"	"
	N ½, n ½ of s w ¼, n ½ of s e ¼	13	"	"
	All of secs 15 & 17	--	"	"
	N ½ of n w ¼, n ½ of n e ¼	19	"	"
	W ½ of n e ¼, n w ¼, w ½ of s w ¼, n e ¼ of s w ¼	1	137	45
	All of sections 3, 5, 7, 9, 11	--	"	"
478	W ½ of n w ¼, s w ¼	13	137	45
	All of sections 15, 17, 19, 21, 23, 25	--	"	"
	S e ¼ of n e ¼, w ½ of n e ¼, w ½, s e ¼	27	"	"
	All of sections 29, 31, 33, & 35	--	"	"
	S w ¼, w ½ of s e ¼	23	138	"
	All of	25	"	"
	"	27	"	"
	S ½	29	"	"
	All of sections 31, 33, & 35	--	"	"
	S ½, s ½ of n ½, lot 1	1	140	45
	All of	3	"	"
	E ½ of n w ¼, e ½ of s w ¼, e ½	9	"	"
	All of 11, 13, & 15	--	"	"
	E ½ of n e ¼, e ½ of s e ¼	21	"	"
	All of sections 23, 25, & 27	--	"	"
	E ½ of n e ¼, e ½ of s e ¼	33	"	"
	All of	35	"	"
	"	1	141	45
	S ½ of n e ¼, w ½, s e ¼	3	"	"
	E ½ of n e ¼, e ½ of s e ¼	5	"	"
479	E ½, e ½ of n w ¼, e ½ of s w ¼	9	141	45
	All of secs 11, 13, & 15	--	"	"
	E ½, e ½ of n w ¼, e ½ of s w ¼	21	"	"
	All of secs 23, 25, & 27	--	"	"
	E ½, e ½ of n w ¼, e ½ of s w ¼	33	"	"
	All of	35	"	"

Schedule "E"—Continued.

	Description.	Sec.	Town.	Range.
	All of	1	142	45
44	"	3	"	"
"	E ½, e ½ of n w ¼, e ½ of s w ¼	5	"	"
44	All of secs 9, 11, 13, & 15	--	"	"
"	E ½ of n e ¼	17	"	"
"	All of secs 21, 23, 25, & 27	--	"	"
"	E ½ of n e ¼, e ½ of s e ¼	29	"	"
"	All of secs 33 & 35	--	"	"
"	S ½ of s w ¼, s ½ of s e ¼	27	143	45
44	S ½ of n e ¼, s ½ of n w ¼, s ½	25	"	"
"	All of secs 33 & 35	--	"	"
"	All of	1	136	46
"	N e ¼ of n e ¼, s ½ of n e ¼, s e ¼ of n w ¼, s ½	3	"	"
45	All of secs 5, 7, 9, 11, 13, 16, & 17	--	"	"
"	N ½ of n w ¼, n ½ of n e ¼	19	"	"
"	480 Same of	21	136	46
"	"	23	"	"
"	All of	1	137	"
"	N ½ of n ½, s e ¼ of n e ¼	3	"	"
45	All of sects 5 & 7	--	"	"
"	N ½ of n e ¼, w ½, s e ¼	9	"	"
45	All of secs 13, 15, 17, & 19	--	"	"
"	N w ¼	21	"	"
"	E ½ of e ½, n w ¼ of n e ¼	23	"	"
"	All of	25	"	"
"	S e ¼ of n e ¼, s ½	27	"	"
"	N e ¼ of n e ¼, n e ¼ of n w ¼, s ½ of s ½, n e ¼ of s e ¼	29	"	"
"	All of secs 31, 33, & 35	--	"	"
"	S ½	35	138	46
45	N e ¼ of n e ¼	21	136	47
"	All of secs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35	--	137	47
"	All of	3	139	"
"	"	7	"	"
"	"	11	"	"
"	481 W ½	13	139	47
"	All of	15	"	"
45	W ½	17	"	"
"	All of	19	"	"
"	N ½	23	"	"
45	All of secs 25 & 27	--	"	"
"	W ½	29	"	"
"	All of secs 31 & 35	--	"	"
"	All of secs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, & 27	--	140	47
"	W ½ of n e ¼, w ½, s e ¼	29	"	"

Schedule "E"—Continued.

Description.	Sec.	Town.	Range.
All of	31	"	"
S ½ of n e ¼, w ½ s e ¼	33	"	"
All of	35	"	"
S ½ of n w ¼, s ½ of n e ¼, s ½	19	141	47
Same of	21	"	"
"	23	"	"
All of secs 25, 27, 29, 31, 33, & 35	--	"	"
All of secs 1 & 3	--	139	48
E ½ of n e ¼	5	"	"
All of	11	"	"
S ½	13	"	"
482 N ½	15	139	48
N e ¼	5	140	48
E ½ of s w ¼	7	"	"
All of	9	"	"
W ½	11	"	"
All of	15	140	"
W ½	23	"	"
"	25	"	"
E ½, e ½ of w ½	27	"	"
Lots 2, 3, 4, 5	29	"	"
All of	35	"	"
Lot 5	1	141	49

483 SCHEDULE "F."

List of lands not included in Schedule "A" of lands annexed to complaint, situated within 30-mile indemnity limits of withdrawal of October 12th, 1870, and also within limits of St. P. & P. R. R., now St. P., M. & M. R'y.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
S ½ of s e ¼, e ½ of s w ¼	3	132	40	All.
W ½, w ½ of s e ¼, w ½ of n e ¼	7	"	"	"
W ½ of s w ¼	7	133	"	All as given.
N e ¼ of n w ¼, n e ¼ of s e ¼, lots 1, 2, 3, 4, 5	21	"	"	All as given.
N w ¼	27	"	"	All as given.
N w ¼ of s w ¼, lot 4	29	"	"	All.
Lots 2 & 3, n ½ of n e ¼	31	"	"	"
Lot 8	33	"	"	"
All of	1	132	41	"
Lots 1, 2, 6, 7, 8, n w ¼ of s w ¼	3	"	"	"
N e ¼ of n e ¼, n w ¼ of n w ¼, w ½ of s w ¼, s e ¼ of s w ¼, s w ¼ of s e ¼, lots 1, 2, 5, 6, 7	11	"	"	"

Schedule "F"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
484	Lot 1	3	133	41	All.
	All of	7	"	"	"
Lots 6 & 7		9	"	"	"
W ½ of s w ¼		15	"	"	"
All of		17	"	"	"
W ½ of s w ¼		23	"	"	"
Lot 9		25	"	"	"
All of		27	"	"	"
"		35	"	"	"
"		1	133	42	"
E ½, e ½ of n w ¼, n w ¼ of n w ¼, s w ¼ of n w ¼		3	"	"	All.
N ½ of n ½, n e ¼ of s w ¼, n ½ of s e ¼		5	"	"	"
S ½, lot 9		7	"	"	"
All of		9	"	"	"
E ½, e ½ of n w ¼, s w ¼ of n w ¼		11	"	"	"
All of		13	"	"	"
Lots 2 3, 5		15	"	"	"
S e ¼ of n e ¼, w ½ of n e ¼, e ½ of n w ¼, s ½		7	134	42	"
All of secs 17, 19, 21, 27, 29, 31, 33, 35		--	--	--	All selected.
	W ½ of s w ¼	31	135	42	All.
485	S e ¼ of n w ¼, n ½ of s w ¼, s e ¼ of s w ¼	3	135	43	All.
Lots 1, 3, 4, 5, 6, 7, 8, 9, 10, s ½ of s ½		5	"	"	"
All of		7	"	"	"
E ½ & s w ¼		9	"	"	"
All of		15	"	"	"
E ½, n ½ of n w ¼, s w ¼ of s w ¼		17	"	"	"
N ½, n ½ of s e ¼, s e ¼ of s e ¼		19	"	"	"
N ½ of n ½, s w ¼ of n w ¼, s e ¼ of n e ¼, e ½ of s w ¼, s w ¼ of s e ¼, s w ¼ of s w ¼		21	"	"	"
S ½ of n w ¼, n w ¼ of n w ¼, s ½, lot 3		23	"	"	"
S w ¼, w ½ of s e ¼		25	"	"	"
E ½, e ½ of n w ¼, s w ¼		27	"	"	"
All of		29	"	"	"
N ½, w ½ of s w ¼, e ½ of s e ¼		31	"	"	"
All of 33 & 35		--	--	--	All selected.
Lot 1		19	136	43	"
S e ¼ of n e ¼, s e ¼ of s e ¼		21	"	"	"
S e ¼, s ½ of n e ¼, s ½ of s w ¼		29	"	"	"
All of		31	"	"	"

Schedule "F"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
486	N w ¼ of n w ¼, s w ¼, w ½ of s e ¼	33	136	43	
	W ½ of s w ¼, s e ¼ of s w ¼, n e ¼ of s w ¼	1	135	44	All.
	N w ¼, w ½ of s w ¼, n e ¼ of s w ¼, n e ¼, n w ¼ of s e ¼	3	"	"	"
	E ½	11	"	"	"
	All of	13	"	"	"
	S w ¼ of n w ¼, w ½ of s w ¼, s e ¼ of s w ¼, lot 7	15	"	"	"
	S e ¼	23	"	"	"
	Lots 1, 2, 3, 5, 8, & 9	25	"	"	"
	N e ¼, lot 1, s e ¼ of n w ¼, n ½ of s ½	27	"	"	"
	Lots 1, 2, 3, 4, 5, 6, 7, s e ¼ of n e ¼, W ½ of n w ¼	35	"	"	"
	Lots 5, 6, 7, & 8, s ½ of s w ¼	13	136	"	"
487	N w ¼ of n w ¼, n e ¼ of s e ¼	15	136	44	All.
	S ½	17	"	"	"
	E ½, n e ¼ of s w ¼	23	"	"	"
	Lots 3 & 7	25	"	"	"
	Lot 2	27	"	"	"
	N e ¼ of n w ¼, n w ¼ of n e ¼	35	"	"	"
	S ½ of s ½	13	136	45	"
	S ½ of s w ¼	19	143	44	"
	N w ¼ of n w ¼	23	"	"	"
	All of secs 5, 7, & 9	--	144	44	All selected.
	W ½, w ½ of e ½	15	"	"	All.
	All of secs 17, 19, 21, 27, 29, 31, & 33	--	"	"	All selected.
	N w ¼ of s e ¼, n e ¼ of s w ¼	27	144	46	All.
	S w ¼ of	3	143	48	"
	All of secs 5, 7, 9, 11, 13, 15, 17, 19	--	"	"	All selected. All.
	W ½, n e ¼	23	"	"	"
	N w ¼ of n w ¼, s w ¼ of n w ¼, s w ¼, s w ¼ of s e ¼	29	"	"	"
	N ½ of n ½	31	"	"	"
488	N ½ of n ½	33	143	48	All.
	S w ¼ of n w ¼	9	144	48	"
	N w ¼ of n e ¼	19	"	"	"
	E ½, lots 1, 2, 3, 4	1	143	49	"
	E ½, lots 1, 2, 4, 5, 6, 7	13	"	"	"
	Lot 1	23	"	"	"
	N e ¼ of n e ¼, lots 1, 2, 3, 4, 5	25	"	"	"

Schedule "F"—Continued.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
All of	13	144	49	All.
Lots 1 & 2	11	"	"	Lot 1.
"	23	"	"	
E ½, e ½ of w ½, lots 1, 2, & 3	25	"	"	E ½, e ½ of w ½, lots 1, 2, & 3.
Lots 1 & 2	35	"	"	

489 SCHEDULE "G."

List of lands not included in Schedule "A" of lands annexed to complaint, situated within 40-mile indemnity limits of Northern Pacific R. R., within limits of withdrawal of October 12th, 1870, and within limits of St. P. & P. R. R., now St. P., M. & M. R'y.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
W ½ of s w ¼	7	145	48	All.
All of	9	"	"	"
W ½ n w ¼, w ½ s w ¼	19	"	"	"
S e ¼ of n e ¼, lots 1, 2, & 3	1	145	49	
S e ¼ of n e ¼, lots 7 & 8	13	"	"	"
Do. lot 5	25	"	"	"

490 SCHEDULE "H."

List of lands in Schedule "A" of lands annexed to complaint, situated within 30-mile indemnity limits of Northern Pacific R. R., and within limits of St. P. & P. R. R., now St. P., M. & M. R'y, but not within limits of withdrawal of October 12th, 1870.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
N w ¼	1	128	33	
S w ¼ of s e ¼	3			
N e ¼ of n w ¼	3	129	33	
Lot 5	29	"	"	
W ½ of n w ¼	31	"	"	
N e ¼ of n e ¼, s w ¼ of n e ¼, s ½ of n w ¼, s w ¼, n w ¼ of s e ¼	31	130	33	
S ½ of n e ¼, s e ¼ of n w ¼, n e ¼ of s w ¼, n w ¼ of s e ¼	3	129	34	
S w ¼ of s w ¼	5	"	"	
S w ¼ of n w ¼	13	"	"	
W ½ of s w ¼, n ½ of s e ¼	17	"	"	
S w ¼ of n w ¼	21	"	"	
Lots 3, 4, & 5	25	"	"	
S e ¼ of n e ¼, n w ¼ of n e ¼, lots 1 & 2	27	"	"	Lot 3 of s 27.

Schedule "H"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
	N ½ of n w ¼	33	429	34	
	S e ¼ of s e ¼	35	"	"	
491	N w ¼ of n e ¼, S w ¼ of n e ¼, n w ¼ of s e ¼	19	130	34	
		21	"	"	
	W ½ of n e ¼, s e ¼ of n w ¼, n w ¼ of n w ¼, n w ¼ of s w ¼	27	"	"	
	N e ¼ of n e ¼, n w ¼ of n w ¼, n w ¼ of s w ¼	29	130	34	
	N e ¼ of n e ¼, n e ¼ of s e ¼	33	"	"	
	E ½ of n w ¼, w ½ of s e ¼	35	"	"	
	W ½ of s w ¼	1	129	35	
	E ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼, w ½ of n w ¼, n w ¼ of s w ¼, n e ¼ of s e ¼	3	"	"	
	N w ¼ of n e ¼, n e ¼ of n w ¼, w ½ of n w ¼, n w ¼ of s w ¼, e ½ of s w ¼	5	"	"	
	E ½ of n e ¼, e ½ of s e ¼, s w ¼ of n w ¼, w ½ of s w ¼	7	"	"	
	S e ¼ of n e ¼, s w ¼ of n w ¼, w ½ of s w ¼, s e ¼ of s w ¼, s w ¼ of s e ¼, e ½ of s e ¼	9	"	"	
	S e ¼, s w ¼ of n w ¼	11	"	"	
492	E ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼, s w ¼ of n w ¼, n w ¼ of s w ¼, s e ¼ of s w ¼, s w ¼ of s e ¼, e ½ of s e ¼, s w ¼ of s w ¼	13	129	35	
	N ½ of n w ¼, s e ¼ of s w ¼	15	"	"	
	W ½ of n e ¼, e ½ of n w ¼, n ½ of s w ¼, n w ¼ of s e ¼	19	"	"	
	N ½ of s e ¼	21	"	"	
	S e ¼ of n e ¼, n w ¼ of n e ¼, w ½ of s w ¼	23	"	"	W ½ of s w ¼.
	W ½ of n w ¼	25	"	"	
	S w ¼ of n e ¼, w ½, w ½ of s e ¼, s e ¼ of s e ¼	5	130	"	
	All of	7	"	"	
	N w ¼, s w ¼ of s w ¼, w ½ of s e ¼	9	"	"	
	S w ¼ of n e ¼, s e ¼ of n w ¼, w ½ of n w ¼, s w ¼, w ½ of s e ¼	13	"	"	
	N w ¼, n w ¼ of s w ¼	15	"	"	
	N w ¼, w ½ of s e ¼	17	"	"	
	S e ¼	19	"	"	
	S e ¼ of s e ¼	21	"	"	

Schedule "H"—Continued.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
N w ¼, n e ¼ of s w ¼, s w ¼ of s w ¼	23	130	35	
N e ¼ of n e ¼	29	"	"	
493 N e ¼ of n e ¼, w ½ of n e ¼, w ½, w ½ of s e ¼, s e ¼ of s e ¼	31	130	35	
N ½ of n e ¼, n w ¼	35	"	"	
E ½ of n w ¼, n w ¼ of n w ¼, s ½	31	131	35	
E ½ of n e ¼, n w ¼ of n e ¼, n ½ of n w ¼, n e ¼ of s e ¼	1	129	36	S w ¼ n e ¼, s e ¼ n w ¼, w ½ s e ¼.
N ½ of s w ¼	3	"	"	
N ½, w ½ of s w ¼, n e ¼ of s w ¼, n w ¼ of s e ¼, e ½ of s e ¼	15	130	36	
E ½, e ½ of n w ¼, s ½ of s w ¼	17	"	"	
All of	19	"	"	
N e ¼, n ½ of n w ¼, s ½ of s w ¼, w ½ of s e ¼, n e ¼ of s e ¼	21	"	"	
All of	23	"	"	
N e ¼, s e ¼ of n w ¼, n w ¼ of n w ¼, s ½	25	"	"	
E ½ of n e ¼, n w ¼ of n e ¼, n ½ of n w ¼, s ½ of s w ¼, s e ¼	27	"	"	
E ½, s ½ of n w ¼, n e ¼ of s w ¼	29	"	"	
N ½ of n e ¼, w ½, w ½ of s e ¼	33	"	"	
E ½ of n e ¼, n w ¼, s ½	35	"	"	
S ½ of s w ¼ (should be s w ¼ of s w ¼)	7	131	36	
494 N ½ of s w ¼, s w ¼ of s e ¼, s ½ of n w ¼	17	131	36	
S e ¼ of n e ¼, s w ¼, s w ¼ of s e ¼, e ½ of s e ¼	19	131	"	
S e ¼, s ½ of n e ¼, n e ¼ of n w ¼, s e ¼	27	"	"	
All of secs 29, 31, 33, & 35	--	"	"	
N w ¼ of n w ¼	1	129	37	
All of	1	130	37	
N e ¼ of n e ¼, s w ¼ of n e ¼, n w ¼, n w ¼ of s w ¼, e ½ of s w ¼, w ½ of s e ¼, n e ¼ of s e ¼	3	"	"	
All of secs 5, 7, & 9	--	"	"	
E ½, s ½ of n w ¼, n w ¼ of s w ¼, E ½ of s w ¼	11	"	"	
N e ¼ of n w ¼, e ½ of s w ¼, w ½ of s e ¼	13	"	"	
E ½ of n e ¼, n w ¼ of n e ¼, w ½, lot 2	15	"	"	

Schedule "H"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
	All of	17	130	37	
	N e ¼ of n w ¼	21	"	"	
	S w ¼ of s e ¼, lots 4, 5, & 6	23	"	"	
	All of	25	"	"	
	Lot 4	27	"	"	
495	S e ¼ of n e ¼, w ½ of n e ¼, e ½ of n w ¼, s w ¼ of n w ¼, s e ¼	35	130	37	
	S w ¼ of s w ¼, e ½ of s e ¼	5	131	37	
	N w ¼, lots 3 & 4, n e ¼ of s w ¼, w ½ of s e ¼, s e ¼ of s e ¼	7	"	"	
	N e ¼ of n e ¼, s e ¼ of n w ¼	9	"	"	
	N w ¼ of n e ¼, n e ¼ of n w ¼, lot 2	11	"	"	
	N e ¼ of s e ¼, s w ¼ of n w ¼, s w ¼, lot 4	15	"	"	
	N e ¼ of n e ¼, lots 1, 6, 7	17	"	"	
	S ½ of s w ¼, s ½ of s e ¼	19	"	"	
	N e ¼ of n e ¼, s w ¼ of n e ¼, s e ¼ of n w ¼, n e ¼ of s w ¼, w ½ of s w ¼	25	"	"	
	E ½ of s e ¼, s w ¼ of s e ¼	27	"	"	
	W ½, s w ¼ of n e ¼	29	"	"	
	All of	31	"	"	
	S ½ of n w ¼, s w ¼, s ½ of s e ¼	33	"	"	
	N e ¼ of n e ¼, w ½ of s w ¼, s e ¼ of s w ¼, s e ¼ of s e ¼	35	"	"	
	N e ¼, e ½ of n w ¼, n w ¼ of s w ¼, e ½ of s w ¼, n w ¼ of s e ¼	1	130	38	
496	S w ¼ of s e ¼, s ½ of s w ¼	3	130	38	
	S w ¼ of n w ¼	11	"	"	
	E ½ of n e ¼	13	"	"	
	N ½ of n e ¼	15	"	"	
	N e ¼, w ½	1	131	38	
	N e ¼ of n e ¼, w ½ of n e ¼, n w ¼, w ½ of s w ¼, n e ¼ of s w ¼, w ½ of s e ¼, s e ¼ of s e ¼	3	"	"	
	N ½, w ½ of s w ¼, n e ¼ of s w ¼, s e ¼	5	"	"	
	All of secs 7 & 9	--	"	"	
	N e ¼, e ½ of n w ¼, n w ¼ of n w ¼, s ½	11	"	"	
	All of	13	"	"	
	N e ¼, w ½ of s e ¼, s e ¼ of s e ¼, w ½	15	"	"	
	All of	17	"	"	
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, s ½	19	"	"	

Schedule "H"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
	All of	21	131	38	
	E ½ of n e ¼, n w ¼ of n e ¼, n ½ of n w ¼, n ½ of s w ¼, s e ¼	23	"	"	
	All of	25	"	"	
497	S w ¼, w ½ of s e ¼, s e ¼ of s e ¼	27	"	"	
	E ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼, w ½ of n w ¼, w ½ of s w ¼, lot 2	29	"	"	
	E ½, e ½ of n w ¼, n w ¼ of n w ¼, n e ¼ of s w ¼	31	"	"	
	Lots 1, 2, 3, 4, 5, 6, & 7, s ½ of n w ¼, e ½ of s w ¼, s ½ of s e ¼	33	"	"	Lot 2.
	N w ¼, e ½	35	"	"	
	S ½ of n e ¼, s ½, n w ¼	19	132	38	
	All of secs 29, 31, & 33	--	"	"	
	S ½	35	"	"	
	All of secs 1, 5, 11, 13	--	131	39	
	N ½, n ½ of s e ¼, n ½ of s w ¼, s e ¼ of s e ¼	15	"	"	
	All of secs 23 & 25	--	"	"	
	W ½ of n e ¼, w ½, n w ¼ of s e ¼, s e ¼ of s e ¼	13	132	39	
	All of secs 15, 17, & 19	--	"	"	
	Lot 1, n w ¼, w ½ of s w ¼, s e ¼ of s w ¼, s w ¼ of s e ¼	21	"	"	
498	All of sections 23 & 25	--	132	39	
	E ½ of n e ¼, s w ¼ of n e ¼, n w ¼, n e ¼ of s e ¼	27	"	"	
	All of	29	"	"	
	Lots 1, 2, 3, 8, 9, & 10	31	"	"	
	Lots 1, 2, 3, 4, 5, s w ¼ of n w ¼, s w ¼, w ½ of s e ¼	33	"	"	
	All of	35	"	"	
	Lot 3	15	132	40	
	N w ¼ of n w ¼, s w ¼ of s w ¼	23	"	"	
	N w ¼ of n e ¼, lot 1	35	132	40	Lot 1.
	W ½ of n w ¼, s w ¼	31	135	46	
	All of sects 1, 3, 5, 7, 9	--	135	47	
	S w ¼, w ½ of n w ¼, w ½ of s e ¼	11	135	47	
	All of secs 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35	--	"	"	
	S ½ of n w ¼, s ½ of n e ¼, s ½	19	136	47	
	S ½ of n w ¼, s w ¼, w ½ of s e ¼, s w ¼ of s e ¼	21	"	"	
	S ½ of n w ¼, s ½ of n e ¼, s ½	23	"	"	

Schedule "H"—Continued.

	Description.	Sec.	Town.	Range.	N. P. R. R. selections.
	All of	25	136	47	
	W ½ of s w ¼	27	"	"	
	All of secs 29, 31, 33, & 35	--	"	"	
499	Lot 1	17	135	48	

500 SCHEDULE "I."

List of lands mentioned in Schedule "A" of lands annexed to complaint, situated within 40-mile indemnity limits of Northern Pacific R. R., within limits of St. P. & P. R. R., now St. P., M. & M. R'y, but not within limits of withdrawal of October 12th, 1870.

	Description.	Sec.	Town.	Range.	
	S e ¼ of s w ¼	19	127	32	
	Lots 1, 2	31	"	"	
	W ½ of n w ¼, w ½ of s w ¼	19	128	"	
	N ½, e ½ of s w ¼, s e ¼	1	127	33	
	N ½ of n e ¼, s ½ of s e ¼, lot 3	3	"	"	
	Lots 6 & 7, s e ¼ of s w ¼	25	"	"	
	Lot 1	35	"	"	
	W ½ of n w ¼	7	128	"	
	S w ¼ of s w ¼, s w ¼ of s e ¼	9	"	"	
	S w ¼ of n e ¼	17	"	"	
	E ½, n w ¼ of n w ¼, s ½ of s w ¼	25	"	"	
	Lot 2, e ½ of s w ¼	27	"	"	
	S e ¼ of n e ¼	33	"	"	
	E ½ of n e ¼, n w ¼ of n e ¼, s ½ of s w ¼, s w ¼ of s e ¼, e ½ of s e ¼	35	"	"	
501	N e ¼ of n w ¼	7	128	34	
	Lots 1, 2, & 3	9	"	"	
	S e ¼ of n w ¼	31	129	"	
	S ½ of s w ¼, s w ¼ of s e ¼	19	"	35	
	S w ¼ of s e ¼	15	"	36	
	E ½ of n e ¼, e ½ of s e ¼	21	"	"	
	S w ¼ of n w ¼, w ½ of s w ¼, s e ¼ of s w ¼, s ½ of s e ¼	23	"	"	
	W ½ of n w ¼	25	139	36	
		--	145	44	
	All of sects 5 & 7	--	"	"	All.
	W ½, s e ¼, w ½ of n e ¼	9	"	"	"
	W ½ of n w ¼, w ½ of s w ¼	15	"	"	"
	All of	17	"	"	"
	W ½	27	"	"	"
	W ½ of n e ¼, w ½ of s e ¼, w ½	17	146	44	"
	All of	19	"	"	"
	W ½ of n w ¼, w ½ of s w ¼	21	"	"	"

Schedule "I"—Continued.

Description.	Sec.	Town.	Range.	
All of secs 29 & 31	--	146	44	All.
W ½ of n e ¼, w ½ of s e ¼, w ½	33	"	"	"
W ½ of n w ¼, s ½	19	133	45	"
S ½ of s w ¼, s w ¼ of s e ¼	29	"	"	"
N ½ of n w ¼	31	"	"	"
All of	13	146	"	"
S ½	15	"	"	"
502 S ½ of s w ¼, s ½ of s e ¼	17	146	45	"
All of sections 23, 25, 27, & 35	--	"	"	All selected.
All of sections 3, 5, 7, & 9	--	133	46	
W ½	11	"	"	
S e ¼, w ½	13	"	"	
W ½	15	"	"	
All of 17, 19, 21, & 23		"	"	
E ½ of	25	"	"	
All of	27	"	"	
W ½	29	"	"	
N ½ of n e ¼, n ½ of n w ¼	33	"	"	
N ½ of n e ¼	35	"	"	
W ½	17	134	46	
All of	19	"	"	
W ½	21	"	"	
S w ¼, w ½ of n w ¼	27	"	"	
E ½, n w ¼	29	"	"	
S w ¼	31	"	"	
E ½	33	"	"	
S w ¼	35	"	"	
E ½	11	133	47	
N e ¼, s ¼	13	"	"	

503 SCHEDULE "K."

List of lands not included in Schedule "A" of lands annexed to complaint within 30-mile indemnity limits of Northern Pacific R. R. and within limits of St. P. & P. R. R., now St. P., M. & M. R'y, but not within limits of withdrawal of October 12th, 1870.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
Lots 1, 2	3	129	33	All.
N ½ of s w ¼	7	"	"	"
E ½ of s e ¼	27	"	"	"
N ½ of N ½	1	128	34	"
N w ¼ of n e ¼, n e ¼ of n w ¼, s w ¼ of s e ¼	3	129	34	"
S w ¼	7	"	"	"

Schedule "K"—Continued.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
N e ¼ of n w ¼	9	129	34	All.
N ½ of n w ¼	11	"	"	"
E ½ of s w ¼	17	"	"	"
S e ¼ of n e ¼, w ½ of n e ¼, s e ¼	19	"	"	"
S w ¼ of n e ¼, s ½ of n w ¼	29	"	"	"
S w ¼ of n w ¼, e ½ of s w ¼, s e ¼	27	130	34	
N w ¼ of s w ¼, n e ¼	35	"	"	"
504 E ½ of w ½, s e ¼	1	129	35	
S w ¼ of n e ¼, s e ¼ of n w ¼, n e ¼ of s w ¼, n w ¼ of s e ¼, s ½ of s e ¼	3	"	"	
W ½ of n e ¼, e ½ of n w ¼, e ½ of s w ¼, w ½ of s e ¼	7	"	"	
S w ¼ of n e ¼, s e ¼ of n w ¼, n e ¼ of s w ¼, n w ¼ of s e ¼	9	"	"	
N e ¼, e ½ of n w ¼, n ½ of s w ¼, s e ¼ of s w ¼	11	"	"	
S w ¼ of n e ¼, s e ¼ of n w ¼, w ½ of s e ¼	5	"	"	
S e ¼ of n w ¼, s w ¼ of n e ¼, n w ¼ of s e ¼, n w ¼ of n w ¼	13	"	"	
S w ¼ of n w ¼	15	129	35	
N e ¼, e ½ of w ½	17	"	"	
E ½ of n e ¼, n e ¼ of s e ¼	19	"	"	
S ½ of n w ¼, n ½ of s w ¼	21	"	"	
N e ¼ of s w ¼, n w ¼, s w ¼ of n e ¼, w ½ of s w ¼, n w ¼ of s e ¼	23	"	"	
E ½ of n e ¼	25	"	"	
N w ¼	27	"	"	
N w ¼ of n e ¼	29	130	35	
N ½ of s w ¼	35	"	"	
S e ¼ of n w ¼, s w ¼ of n e ¼, w ½ of s e ¼	1	129	36	
505 N ½ of n w ¼, n w ¼ of s e ¼, e ½ of s w ¼	13	129	36	
S w ¼ of n e ¼, n w ¼ of s w ¼	15	"	"	
S ½ of n w ¼, n ½ of s w ¼	21	130	36	
S e ¼ of n w ¼	21	131	"	
N e ¼ of n w ¼, n ½ of n e ¼	19	130	37	
Lot 5	21	"	"	
N e ¼ of s e ¼	27	"	"	
S ½ of s e ¼	9	131	37	
N w ¼ of n w ¼, lots 5, 6, & 7	11	"	"	
Lot 1, e ½ of n e ¼	15	"	"	
Lot 8, s e ¼ of s e ¼	17	"	"	
N ½ of n w ¼, s w ¼ of s w ¼, n e ¼ of s w ¼, lots 6 & 7	21	"	"	

Schedule "K"—Continued.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
Lot 1, s ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼, n w ¼ of s e ¼	27	131	37	
S e ¼ of n e ¼, n e ¼ of s e ¼	29	"	"	
N e ¼ of s e ¼	3	130	38	
S e ¼	1	131	38	
S w ¼ of n e ¼, s e ¼ of n w ¼, n e ¼ of s w ¼, lot 3	29	"	"	
N w ¼ of n e ¼	27	132	39	
Lots 1 & 2, n e ¼ of s w ¼	23	"	40	
E ½ of e ½, lots 4, 5, & 6	25	"	"	

506 SCHEDULE "L."

List of lands not included in Schedule "A" of complaint and not within limits of withdrawal of October 12th, 1870, but within 40-mile indemnity limits of Northern Pacific R. R., and also within limits of St. P. & P. R. R., now St. P., M. & M. R'y Co.

Description.	Sec.	Town.	Range.	N. P. R. R. selections.
W ½	13	128	33	
S w ¼ of s e ¼, e ½ of s e ¼, s e ¼ of n e ¼	1	"	34	
N e ¼	5	"	"	
N w ¼ of s w ¼, s e ¼ of n w ¼, s e ¼, s e ¼ of n e ¼, n e ¼ of s w ¼, n w ¼ of n e ¼, s w ¼ of n e ¼, n ½ of n w ¼, s w ¼ of n w ¼	11	128	34	
N ½ of n e ¼	13	"	"	
N ½ of n e ¼, n w ¼ of n w ¼	15	"	"	
N ½ of n e ¼, s w ¼ of n e ¼, w ½, s e ¼	1	128	35	
S e ¼ of s e ¼	19	129	35	
S w ¼ of s w ¼	27	"	"	
S e ¼ of s e ¼	15	"	36	

Endorsed: Filed Dec. 8, 1886. Oscar B. Hillis, clerk.

507 And on the same day, to wit, the 8th day of December, 1886, the following exceptions to master's report were filed in the words and figures following:

Exceptions to Master's Report.

508 Circuit Court of the United States for the District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, Thomas Denny, Thomas W. Pearsall, Trustees; Jesse P. Farley, Receiver, and Hon. Geo. P. Wilson, Attorney General of Minnesota,

and

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

509 Exceptions taken jointly and severally by Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, and The St. Paul, Minneapolis and Manitoba Railway Company, defendants and parties to the original bill in this cause and complainants in the supplemental bill filed therein, to the report of B. J. Shipman, Esq., one of the masters of this court, to whom the said cause stands referred, made in pursuance of the decree made on the hearing of the said cause bearing date the third day of March, A. D. 1886.

First exception.

For that the said master has included in his report, in Schedule C, thereto annexed, a list of lands as belonging to said com-
510 plainant, which it appears from said report consists of lands in the thirty-mile indemnity limits of the grants to the Northern Pacific Railroad Company and which have been patented and conveyed to the St. Paul and Pacific Railroad Company and are embraced in the list of lands annexed to the original bill of complaint herein, as corrected, without any proof whatever that said lands or any part thereof have ever been selected by said Northern Pacific Railroad Company as indemnity lands under its alleged grant.

Second exception.

For that the said master has included in his report, in
511 Schedule D, thereto annexed, a list of lands as belonging to said complainant, which, it appears from said report, consists of lands in the forty-mile indemnity limits of the grant to the Northern Pacific Railroad Company, and which have been patented and conveyed to the St. Paul and Pacific Railroad Company, and are embraced in the list of lands annexed to the original bill of complaint herein, as corrected, without any proof whatever that said lands or any part thereof have been selected by said Northern Pacific Railroad Company to make up any deficiency along the line

of its road to the amount of or for lands that had been granted, sold,
reserved, occupied by homestead settlers, pre-empted, or other-
512 wise disposed of subsequent to the passage of the act of Con-
gress July 2nd, 1864, and without proof of the selection of the same by said Northern Pacific Railroad Company in any way or manner whatever known to the law.

Third exception.

For that the said master has included in his report, in Schedule F thereof, a list of lands as belonging to said complainant, which, it appears from said report, consists of lands within the place limits of the grant to the Northern Pacific Railroad Company and not included in the schedule of lands annexed to the bill of complaint herein, but which are located, as appears from said report, within the limits of the St. Paul and Pacific Railroad Company, the present
St. Paul, Minneapolis and Manitoba Railway Company,
513 without any proof whatever that the same or any part thereof have been patented or conveyed to the defendants in this cause or any or either of them or to said St. Paul, Minneapolis and Manitoba Railway Company.

Fourth exception.

For that the said master has included in his report, in Schedule F thereof, a list of lands as belonging to said complainant, which, it appears from said report, consists of lands within the thirty-mile indemnity limits of the grant to the Northern Pacific Railroad Company, and not included in the schedule of lands annexed to the bill of complaint herein, as corrected, without any proof whatever that
the same or any part thereof have been patented by the North-
514 ern Pacific Railroad Company in any way or manner whatever known to the law prior to the commencement of this suit.

Fifth exception.

For that the said master has included in his report in Schedule G thereof, a list of lands as belonging to the said complainant which, it appears from said report, consists of lands within the forty-mile indemnity limits of the grant to the Northern Pacific Railroad Company, and not included in schedule of lands annexed to the bill of complaint herein, as corrected, without any proof whatever that the same or any part thereof were ever patented or conveyed to the defendants in this cause or any or either of
515 them, and without any proof that the same or any part thereof have been selected before the commencement of this suit by the said Northern Pacific Railroad Company to make up any deficiency along the line of its road to the amount of or for lands that had been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of Congress July 2nd, 1864, in any way or manner whatever known to the law.

Sixth exception.

For that the said master has erroneously and without any authority whatever included in his report herein lands within the indemnity limits of the grant to the Northern Pacific Railroad
516 Company, both within the thirty and forty mile limits, not selected by it in any manner known to the law prior to the commencement of this suit, to wit, the lands mentioned in Schedules C, D, E, F, and G.

Seventh exception.

For that the said master has erroneously and without any authority whatever included in his report herein lands within the indemnity limits of the grant to the Northern Pacific Railroad Company, both within the thirty and forty mile indemnity limits, that have not nor has any part thereof been patented or in any manner conveyed to the defendants in this suit or any or either of them.

516½ Eighth exception.

For that the said master has erroneously, improperly, and without any authority therefor reported in Schedules H, I, K, and L lands the description of which is noted in red ink and selection of which appears to have been made of lands thereon described since the commencement of this suit, and without any proof that said lands or any part thereof contained in Schedules H, I, K, and L, or either of them, have been patented or conveyed in whole or in part to the defendants in this suit or any or either of them.

Ninth exception.

For that there was no proof produced before said master
517 to show that any definite location of the entire line of the route of the road of Northern Pacific Railroad Company had been or was before the commencement of this suit or before the making of the several selections of lands from the alleged thirty and forty mile indemnity limits of the grant claimed by said company reported by said master to this court or any or either of them.

Tenth exception.

For that no proper or competent or any testimony was produced before said master to show that definite location or any part of the line of definite location of the road of said Northern Pacific
518 Railroad Company prior to the commencement of this suit.

Wherefore the said defendants and parties above named except jointly and severally as aforesaid to the said master's report, and appeal therefrom to the judgment of this honorable court.

R. B. GALUSHA,
Solicitor for Trustees and The St. Paul, Minneapolis & Manitoba Railway Co., Def'ts.

S. U. PINNEY & GEO. B. YOUNG,
Of Counsel.

Filed Dec. 8th, 1886.

OSCAR B. HILLIS, *Clerk.*

519 And afterwards, to wit, on the 10th day of December, 1886, the following petition for leave to amend the bill of complaint was filed in the words and figures following:

Petition to Amend Bill.

520 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiffs,
ag'nst
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY and Others, Defendants.

Petition.

To the honorable the judges of the circuit court of the United States for the district of Minnesota:

Your petitioner, The Northern Pacific Railroad Company, plaintiff in the above-entitled suit, respectfully showeth—

521 That *in* the schedule of lands annexed to the bill of complaint in the above-entitled suit embraces only such tracts as at the date of the filing of the said bill had been certified by the Secretary of the Interior of the United States to the State of Minnesota as lands accruing to said State under the grants thereof mentioned in the pleadings in said suit, made to aid in the construction of the Saint Paul and Pacific railroad, so called; that a large quantity of other lands particularly described in Schedules "E," "F," "G," "K," and "L" of the report of Benjamin J. Shipman, Esq., master in chancery of this court, to whom said cause was referred, on file in the office of the clerk of this court, and which, by the decision of the said court in said cause heretofore made and

522 filed, have been awarded to your petitioner, were omitted from the said schedule annexed to the said bill; that all the evidence adduced by the parties to said suit, plaintiff and defendant, in said cause and all the grounds for the said decision are as applicable to the lands embraced in the said schedules as to those embraced in the said schedule annexed to the said bill of complaint; all of which matters fully appear from the records and files of this court in said cause, including the said report, to which, for greater certainty, reference is hereby made.

Wherefore your petitioner prays leave to amend its said bill of complaint by incorporating therewith the description of lands

523 embraced in the schedules hereto annexed, together with proper averments referring thereto, so that the said bill of complaint may conform to the evidence and decision in said cause.

W. P. CLOUGH,
Solicitor for Plaintiffs.

Filed Dec. 10th, 1886.

OSCAR B. HILLIS, *Clerk.*

524 And afterwards, to, wit, on the 23rd day of December, A. D. 1886, the following further proceedings were had and entered of record in Term Minutes "G," page 354, in the words and figures following:

525 United States Circuit Court for the District of Minnesota. Term Minutes, December Term, A. D. 1886. December 23rd, 1886.

NORTHERN PACIFIC RAILROAD COMPANY
vs.
ST. PAUL AND PACIFIC RAILROAD COMPANY, JESSE P. FARLEY, Receiver; Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, Trustees, etc.,

and

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

526 The exceptions of the St. Paul, Minneapolis and Manitoba Railway Company to the report of B. J. Shipman, Esq., the master in this cause, and the motion of the Northern Pacific Railroad Company to amend its original bill of complaint herein coming on to be heard, the same is fully argued by the solicitors for the respective parties, duly submitted, and by the court taken under advisement.

527 And afterwards, to wit, on the 24th day of December, 1886, a decision concerning the exceptions to master's report was filed and entered of record in Term Minutes "G," page 360, in the words and figures following:

528 United States Circuit Court for the District of Minnesota. Term Minutes, December Term, A. D. 1886. December 24th, 1886.

FRIDAY MORNING.

Court opened pursuant to adjournment.
Present: Honorable David J. Brewer, Hon. R. R. Nelson, judges.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
529 THE ST. PAUL & PACIFIC RAILROAD COMPANY, JESSE P. FARley, Receiver; Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, Trustees, etc.,

and

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Supplemental Bill in the Nature of a Cross-Bill.

The exceptions of the St. Paul, Minneapolis and Manitoba Railway Company to the report of B. J. Shipman, Esq., the master in

this cause, having been argued by counsel for the respective parties, upon consideration thereof it is hereby ordered—

530 That the first, second, ninth, and tenth exceptions be and the same are hereby, overruled.

That the third, fourth, fifth, seventh, and eighth exceptions be, and the same are hereby, sustained.

That the sixth exception, in so far as the same relates to the lands in Schedules "C" & "D" of said report, be, and the same is hereby, overruled; and in so far as the same relates to the lands in Schedules "E," "F," & "G" to said report that the same be, and is hereby, sustained.

And it is further ordered that the entries made upon the record in this cause by the clerk of this court on the 3rd day of March, 1886, in relation to relief under said original bill and dis-

531 missing said supplemental bill in the nature of a cross-bill be, and the same are hereby, vacated, the same having been inadvertently made and without the direction or authority of the court.

Dated December 24th, 1886.

By the court:

DAVID J. BREWER,
Circuit Judge.

532 And afterwards, to wit, on the 24th day of December, A. D. 1886, a final decree was filed in this cause and entered of in record Term Minutes "G," page 363, in the words and figures following:

Final Decree.

533 No. 4.

In the Circuit Court of the United States for the District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY; Jesse P. Farley, Receiver; Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, Trustees, etc., Defendants. } Original Bill.

and

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Complainant,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant. } Supplemental Bill in the Nature of a Cross-Bill.

This cause having come on to be heard before the court and having been argued by counsel, it is ordered, adjudged, and decreed,

and the court doth hereby order, adjudge, and decree, as follows, to wit:

I.

The plaintiff, The Northern Pacific Railroad Company, under and by force and effect of that certain act of Congress
534 approved July 2nd, A. D. 1864, entitled "An act making a grant of lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound, on the Pacific coast, by the northern route," and under and by force and effect of the subsequent acts and joint resolutions of Congress relating to the same subject-matter, has acquired and become owner of a good and lawful estate, as of fee simple absolute, in and to all those certain tracts or parcels of land situated in the counties of Todd, Douglas, Otter Tail, Wilkin, Becker, Clay, & Norman and State of Minnesota, particularly described in the schedules hereto annexed marked, respectively, "B," "C," & "D," and the defendants have not nor have any or either of them or the successors or assigns of any or either of them any right or lawful title or claim in or to any of the said tracts or parcels of land or in or to any part of any of the same, and any and all certificates, patents, and conveyances heretofore made or executed by the President or other officer or officers of the United States to the State of Minnesota, purporting to certify or convey the said tracts or parcels or any of the same or any part of any of the same to the said State for the use and benefit of the defendant, The Saint Paul and Pacific Railroad Company, or for the use and benefit of any of its successors or assigns or otherwise, and any and all certificates, patents, and conveyances heretofore made or executed by the Governor or other officer or officers of the State of Minnesota to the defendant, The Saint Paul and Pacific Railroad Company, or to its successors or assigns or to any of them, purporting to certify or convey the said
535 tracts or parcels or any of the same or any part of any of the same to the defendant, The Saint Paul and Pacific Railroad Company, or to its successors or assigns or to any of them, were and are wholly unauthorized, and the right, title, and interest of the plaintiff, The Northern Pacific Railroad Company, in and to each and all the said tracts and parcels of land have been and remain in equity unaffected and unimpaired by or on account of any such certificate, conveyance, or patent; and the defendants and each of them and their successors and assigns and the successors and assigns of each of them are hereby forever restrained and enjoined from setting up or maintaining in any court of law or equity or in or before any Department of the Government of the United States or elsewhere any right, title, interest, claim, or demand in or to the said tracts or parcels of land or in or to any of the same or in or to any part of any of the same under or through any act or joint resolution of Congress making or purporting to make any grant of lands to the late Territory or present State of Minnesota to aid in the construction of any railroad or under or through any certifica

patent, or conveyance as aforesaid; and any and all legal title in or to any of the said tracts or parcels of land or in or to any part of the same which the defendant, The Saint Paul and Pacific Railroad Company, or its successors or assigns or any or either of them may have acquired under or through any certificate, patent, or conveyance, as aforesaid, is hereby transferred to and vested in the plaintiff, The Northern Pacific Railroad Company, and its successors and assigns without further act or deed.

II.

536 A special commissioner for the care, custody, and sale of the tracts of land described in the schedules hereto annexed having heretofore been appointed by the court, in pursuance of a stipulation entered into between the parties and an order of this court founded thereon, and the said special commissioner having contracted to sell and having sold certain of the said tracts, and having received and realized certain securities and sums of money on account of such sales, and having invested portions of the money so by him received in United States bonds, and having made deeds conveying certain of the said tracts so by him sold to the purchasers thereof, as specifically appears from the reports of the said special commissioner on file in the office of the clerk of this court, *and* it is hereby ordered and directed that the contracts and conveyances entered into and made by the said special commissioner and specified in the said reports stand confirmed, and that they shall have the same force and effect as if the same had originally been entered into and made by the plaintiff or its successors or assigns, as vendor or vendors, instead of by the said special commissioner, and it is hereby further ordered and directed that after deducting therefrom the commissions and disbursements of the said special commissioner, as allowed by the court, all moneys and securities arising from the said contracts and sales and all bonds or other evidences of debts into which any part of the proceeds
537 of the said sales of any lands herein and hereby decreed to the said complainant, The Northern Pacific Railroad Company, may have been converted, be paid and delivered by the said special commissioner and by the depositary of this court to the plaintiff herein or its successors or assigns as its and their exclusive property; and it is hereby further ordered and directed that all the said contracts mentioned in the said reports relating to any lands herein and hereby decreed to the complainant, The Northern Pacific Railroad Company, which at the time of the making of this decree remain in whole or in part unperformed, either by the said special commissioner or by the purchaser or purchasers therein, be turned over and delivered by the said special commissioner to the plaintiff herein or to its successors or assigns, and that the said special commissioner, upon the request and at the expense of the plaintiff herein or of its successors or assigns, from time to time do execute such assignments and other instruments as may be found necessary or convenient for carrying into effect the orders and directions of this decree, according to the intent thereof.

III.

Either or any party to the above-entitled suit may, at any time hereafter, apply to the court for such further orders and directions of the court as may be found necessary or convenient for carrying out the intents and purposes of this decree and for enforcing the rights of the parties as hereby declared.

IV.

538 The bill of complaint herein of the Northern Pacific Railroad Company, as to all lands mentioned or described therein which are not by this decree awarded to the plaintiff, is hereby dismissed, without prejudice to the right of the said plaintiff, its successors or assigns, to institute and prosecute such other and further suits or proceedings, either at law or in equity, as to it or them may seem necessary or proper for establishing its or their right and title, if any, to said lands not so awarded to the said plaintiff.

V.

And it is further ordered, adjudged, and decreed that all relief prayed by the said The Saint Paul, Minneapolis and Manitoba Railway Company in and by its said supplemental bill in the nature of a cross-bill in respect to the lands therein described and claimed by the Saint Paul, Minneapolis and Manitoba Railway Company be, and the same is hereby, denied.

And it is hereby further ordered that all proceedings under or in execution of this decree be, and the same are hereby, stayed for sixty days from and after the entry thereof.

Signed on this 24th day of December, A. D. 1886.

DAVID J. BREWER,
Circuit Judge.

539 SCHEDULE B.

NOTE.—In this schedule N stands for north, S stands for south, E stands for east, W stands for west, N E stands for northeast, N W stands for northwest, S E stands for southeast, S W stands for southwest.

Subdivision of sections.	Section.	Town.	Range.
N ½ of n e ¼	21	131	36
S w ¼ of n e ¼ and s e ¼ of n w ¼	33	133	38
All	1	133	41
All	1	134	41
N e ¼, n w ¼ of s e ¼, s e ¼ of s e ¼, and lots 3, 4, 5, 6, 7, 8, 9, & 10	3	134	41
E ½ of s e ¼ and lots 1, 2, 3, 4, and 5	5	134	41
All	7	134	41

Schedule B--Continued.

	Subdivision of sections.	Section.	Town.	Range.
	N w ¼ of s w ¼, s e ¼ of s w ¼, s e ¼, and lots 2 and 3, n w ¼	9	134	41
	N ½, n w ¼ of s w ¼, and lots 2, 3, 4, & 5	11	134	41
	E ½ of n e ¼, s w ¼, n ½ of s e ¼, and lots 1, 2, and 3	13	134	41
540	N ½ of n w ¼, s ½ of s w ¼, s w ¼ s e ¼, and lots 1, 2, 3, 4, 5, 6, 7, and 8	15	134	41
	All	17	134	41
	E ½ of n e ¼	19	134	41
	All	21	134	41
	N ½ of n e ¼, s ½ of n w ¼, s w ¼, s w ¼ of s e ¼, and lot 1	23	134	41
	W ½ of n w ¼, s ½, and lots 1 & 2	25	134	41
	All	27	134	41
	N e ¼ of n e ¼	33	134	41
	All	35	134	41
	All	5	135	41
	All	7	135	41
	All	9	135	41
	Lot 1	11	135	41
	S w ¼	13	135	41
	All	15	135	41
	All	17	135	41
	All	19	135	41
	All	21	135	41
	N ½, w ½ of s w ¼, n e ¼ of s w ¼, n w ¼ of s e ¼, and e ½ of s e ¼	23	135	41
	All	25	135	41
	E ½, e ½ of w ½, and n w ¼ of n w ¼	27	135	41
	All	29	135	41
	N ½, e ½ of s w ¼, and lots 4, 5, 6, 7, and 8	31	135	41
	All	33	135	41
541	Lots 3 and 4	35	135	41
	All	1	134	42
	E ½ of n e ¼	3	134	42
	Lot 8	11	134	42
	E ½ of n e ¼	13	134	42
	All	1	135	42
	All	3	135	42
	All	5	135	42
	N e ¼ and n ½ of s e ¼	7	135	42
	N e ¼, w ½, and w ½ of s e ¼	9	135	42
	All	11	135	42
	All	13	135	42
	All	15	135	42
	E ½, e ½ of n w ¼, e ½ of s w ¼, and n w ¼ of n w ¼	17	135	42

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	21	135	42
	All	23	135	42
	All	25	135	42
	All	27	135	42
	E ½ of n e ¼	33	135	42
	All	35	135	42
	All	3	136	42
	Lots 1, 2, 3, 4, 5, and 6	5	136	42
	All	7	136	42
	All	9	136	42
	All	11	136	42
	All	13	136	42
	All	15	136	42
542	W ½ of n e ¼, n w ¼, and s ½	17	136	42
	All	19	136	42
	All	23	136	42
	All	25	136	42
	S ½ of s w ¼, s ½ of s e ¼, and lots 1, 2, 3, 4, & 5	27	136	42
	All	29	136	42
	All	31	136	42
	All	33	136	42
	All	35	136	42
	S e ¼ of n e ¼, w ½ of n e ¼, e ½ of n w ¼, and lots 7 and 8	5	137	42
	All	7	137	42
	S ½ of s e ¼ and lots 3, 4, and 5	9	137	42
	W ½ of w ½	15	137	42
	All	17	137	42
	N e ¼, w ½, and n ½ of s e ¼	19	137	42
	All	21	137	42
	All	27	137	42
	Lots 1, 2, and 4	29	137	42
	N ½ and s e ¼	31	137	42
	All	33	137	42
	S e ¼ of n e ¼, w ½ of n e ¼, s ½, and n w ¼	35	137	42
	S ½ of n e ¼, s e ¼, and w ½	19	138	42
	S ½ of s w ¼ and s w ¼ of s e ¼	29	138	42
543	N ½, n w ¼ of s w ¼, and s e ¼	31	138	42
	N ½ of n e ¼	1	135	43
	N ½, n ½ of s w ¼, and n ½ of s e ¼	1	136	43
	All	3	136	43
	S w ¼ of n e ¼, s w ¼ of s w ¼, s e ¼ of s e ¼, and lots 1, 2, and 3	5	136	43
	S e ¼ of n w ¼, s w ¼ of n w ¼, and s w ¼	7	136	43
	S ½	9	136	43
	Lots 1, 2, 3, 4, and 5	11	136	43
	All	13	136	43

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	15	136	43
	N w ¼ and n ½ of s w ¼	17	136	43
	S e ¼ of n e ¼	21	136	43
	E ½, e ½ of n w ¼, and e ½ of s w ¼	23	136	43
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, and s ½	25	136	43
	N e ¼, e ½ of n w ¼, and lots 6 & 7	1	137	43
	N ½, s e ¼, e ½ of s w ¼, and n w ¼ of s w ¼	3	137	43
	S e ¼ of n e ¼, w ½ of n e ¼, n e ¼ of s e ¼, n w ¼, and n w ¼ of s w ¼	5	137	43
	All	7	137	43
	S e ¼ of n e ¼, w ½ of n e ¼, e ½ of n w ¼, s w ¼ of n w ¼, and s ½	9	137	43
544	Lots 1, 3, 4, s ½ of s w ¼, and s w ¼ of s e ¼	11	137	43
	All	13	137	43
	All	15	137	43
	All	17	137	43
	All	19	137	43
	N ½, n w ¼ of s w ¼, e ½ of s w ¼, and s e ¼	21	137	43
	All	23	137	43
	All	25	137	43
	S ½ of n e ¼, n w ¼, and s ½	27	137	43
	S e ¼ of n e ¼, n w ¼ of n e ¼, n w ¼ of n w ¼, and lots 1, 2, 3, 4, 5, and 6	29	137	43
	N e ¼	31	137	43
	E ½ of n w ¼, n w ¼ of n w ¼, s w ¼ of s w ¼, e ½ of s w ¼, and s e ¼	33	137	43
	All	35	137	43
	W ½	1	138	43
	All	3	138	43
	All	5	138	43
	All	7	138	43
	All	9	138	43
	All	11	138	43
	All	15	138	43
	All	17	138	43
545	N ½ of n e ¼ and s ½	19	138	43
	All	21	138	43
	All	23	138	43
	S w ¼ and s e ¼ of s e ¼	25	138	43
	S w ¼ of n w ¼ and lot 4	27	138	43
	All	29	138	43
	All	31	138	43
	All	33	138	43
	All	35	138	43
	All	5	139	43
	E ½	7	139	43
	W ½ of n e ¼, w ½ of s e ¼, and w ½	9	139	43

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	W ½	15	139	43
	S ½ and lots 1, 4, 5, 6, 7, and 9	17	139	43
	All	19	139	43
	W ½ of n e ¼, w ½, and lots 3, 5, and 6	21	139	43
	Lots 3, 4, 5, 6, 7, 8, 9, and 10	27	139	43
	N e ¼ of n e ¼, n w ¼ of n w ¼, s e ¼ of s e ¼, and lots 1, 2, 3, 5, 6, 7, and 8	29	139	43
	All	31	139	43
	All	33	139	43
	N w ¼ and s ½	35	139	43
	W ½	7	140	43
	S ½ of n e ¼, n w ¼, and s ½	19	140	43
546	W ½ of s w ¼ and lot 7	29	140	43
	S ½ of n e ¼, s ½ of n w ¼, and s ½	31	140	43
	Lots 5, 6, 7, and s ½ of s e ¼	1	136	44
	All	1	137	44
	All	3	137	44
	All	11	137	44
	All	13	137	44
	E ½	23	137	44
	E ½ of n w ¼ and e ½ of s w ¼, e ½	25	137	44
	All	1	138	44
	N e ¼, s ½, and lots 3 and 10	3	138	44
	All	5	138	44
	All	7	138	44
	All	9	138	44
	All	11	138	44
	All	13	138	44
	All	15	138	44
	N ½, n ½ of s w ¼, and s e ¼	17	138	44
	All	21	138	44
	All	23	138	44
	All	25	138	44
	All	27	138	44
	E ½	33	138	44
	All	35	138	44
547	S w ¼ of n e ¼, w ½, and lots 1, 2, 5, and 7	1	139	44
	All	3	139	44
	All	5	139	44
	All	7	139	44
	All	9	139	44
	S w ¼ of n e ¼, n w ¼ of s e ¼, w ½, and lots 1, 2, 4, 6, 7, 8, and 9	11	139	44
	All	13	139	44
	All	15	139	44
	All	17	139	44
	All	19	139	44

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	21	139	44
	All	23	139	44
	All	25	139	44
	S ½ of n e ¼, w ½, and s e ¼	27	139	44
	All	29	139	44
	All	31	139	44
	All	33	139	44
	All	35	139	44
	S ½ and lots 2 and 3	1	140	44
	All	5	140	44
	All	7	140	44
	All	9	140	44
	E ½	11	140	44
	All	13	140	44
	All	15	140	44
548	All	17	140	44
	N e ¼, e ½ of n w ¼, n w ¼ of n w ¼, and s ½	19	140	44
	All	21	140	44
	All	23	140	44
	All	25	140	44
	All	27	140	44
	All	29	140	44
	N ½ of s w ¼ and s e ¼ of s w ¼	23	141	44
	All	1	138	45
	All	3	138	45
	S ½, n w ¼, and s w ¼ of n e ¼	5	138	45
	All	7	138	45
	W ½, n e ¼, w ½ of s e ¼, and s e ¼ of s e ¼	9	138	45
	All	11	138	45
	All	13	138	45
	N e ¼ of n e ¼, w ½ of n e ¼, n w ¼, and s ½	15	138	45
	All	17	138	45
	All	19	138	45
	All	21	138	45
	N w ¼ and w ½ of n e ¼	23	138	45
	N ½	29	138	45
	All	1	139	45
	All	3	139	45
549	N e ¼, e ½, and s ½	5	139	45
	All	7	139	45
	All	9	139	45
	All	11	139	45
	All	13	139	45
	All	15	139	45
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, and s ½	17	139	45
	All	19	139	45
	All	21	139	45

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	N ½ of n e ¼, s w ¼ of n e ¼, n ½ of s e ¼, w ½, and lots 1 and 2	23	139	45
	All	25	139	45
	All	27	139	45
	All	29	139	45
	All	31	139	45
	All	33	139	45
	All	35	139	45
	All	5	140	45
	All	7	140	45
	W ½ of n w ¼ and w ½ of s w ¼	9	140	45
	All	17	140	45
	All	19	140	45
	W ½ of n e ¼, w ½ of s e ¼, and w ½	21	140	45
	All	29	140	45
	All	31	140	45
550	W ½ of n e ¼, w ½ of s e ¼, and w ½	33	140	45
	W ½ of n e ¼, w ½ of s e ¼, and w ½	5	141	45
	All	7	141	45
	W ½ of n w ¼ and w ½ of s w ¼	9	141	45
	All	17	141	45
	All	19	141	45
	W ½ of n w ¼ and w ½ of s w ¼	21	141	45
	All	29	141	45
	All	31	141	45
	W ½ of n w ¼ and w ½ of s w ¼	33	141	45
	W ½ of n w ¼ and w ½ of s w ¼	5	142	45
	All	7	142	45
	W ½ of n e ¼, w ½ of s e ¼, and w ½	17	142	45
	All	19	142	45
	W ½ of n e ¼, w ½ of s e ¼, and w ½	29	142	45
	All	31	142	45
	S ½ of n e ¼, s ½ of n w ¼, and s ½	31	142	45
	All	1	138	46
	All	3	138	46
	All	5	138	46
551	E ½, n e ¼ of n w ¼, s w ¼ of s w ¼, and e ½ of s w ¼	7	138	46
	All	9	138	46
	All	11	138	46
	All	13	138	45
	N ½, w ½ of s w ¼, n e ¼ of s w ¼, and e ½ of s e ¼	15	138	46
	All	17	138	46
	All	19	138	46
	All	21	138	46
	All	23	138	46
	All	25	138	46

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	27	138	46
	All	29	138	46
	All	31	138	46
	All	33	138	46
	N ½	35	138	46
	All	1	139	46
	All	3	139	46
	All	5	139	46
	All	7	139	46
	All	9	139	46
	All	11	139	46
	All	13	139	46
	All	15	139	46
	All	17	139	46
	All	19	139	46
	All	21	139	46
552	All	23	139	46
	All	25	139	46
	All	27	139	46
	All	29	139	46
	All	31	139	46
	All	33	139	46
	All	35	139	46
	All	1	140	46
	All	3	140	46
	All	5	140	46
	All	7	140	46
	All	9	140	46
	All	11	140	46
	All	13	140	46
	All	15	140	46
	All	17	140	46
	All	19	140	46
	All	21	140	46
	All	23	140	46
	All	25	140	46
	All	27	140	46
	All	29	140	46
	All	31	140	46
	All	33	140	46
	N ½ of n e ¼, n e ¼ of n w ¼, s w ¼ of n w ¼, s w ¼, and s w ¼ of s e ¼	35	140	46
553	All	1	141	46
	All	3	141	46
	All	5	141	46
	All	7	141	46
	All	9	141	46

Schedule B—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	11	141	46
	All	13	141	46
	S e ¼ of n e ¼, w ½ of n e ¼, n w ¼, and s ½	15	141	46
	All	17	141	46
	All	19	141	46
	All	21	141	46
	All	23	141	46
	All	25	141	46
	All	27	141	46
	All	29	141	46
	All	31	141	46
	All	33	141	46
	All	35	141	46
	S e ¼ of s e ¼, w ½ of s e ¼, and s w ¼	1	142	46
	All	3	142	46
	All	5 7	142	46
	All	9	142	46
	All	11	142	46
	All	13	142	46
	All	15	142	46
	All	17	142	46
554	All	19	142	46
	All	21	142	46
	All	23	142	46
	E ½ of n e ¼, n w ¼ of n e ¼, n e ¼ of n w ¼, w ½ of n e ¼, w ½ of s w ¼, s w ¼ of s e ¼, and e ½ of s e ¼	25	142	46
	All	27	142	46
	All	29	142	46
	All	31	142	46
	All	33	142	46
	All	35	142	46
	S ½ of n w ¼, s ½ of n e ¼, and s ½	31	143	46
	S ½ of n w ¼, s ½ of n e ¼, and s ½	33	143	46
	S ½ of n w ¼, s w ¼ of n e ¼, and n w ¼ of s w ¼	35	143	46
	All	1	136	47
	All	3	136	47
	All	5	136	47
	All	7	136	47
	All	9	136	47
	All	11	136	47
	All	15	136	47
	All	17	136	47
555	N ½ of n w ¼ and n ½ of n e ¼	19	136	47
	N ½ of n w ¼ and n w ¼ of n e ¼	21	136	47
	N ½ of n w ¼ and n ½ of n e ¼	23	136	47

Schedule B—Continued.

Range.	Subdivision of sections.	Section.	Town.	Range.
46	All	1	136	47
46	All	3	138	47
46	All	5	138	47
46	All	7	138	47
46	All	9	138	47
46	All	11	138	47
46	S ½ of n e ¼, n w ¼, and s ½	13	138	47
46	All	15	138	47
46	All	17	138	47
46	All	19	138	47
46	All	21	138	47
46	N e ¼, w ½ of s e ¼, and n e ¼ of s e ¼	23	138	47
46	All	25	138	47
46	All	27	138	47
46	All	29	138	47
46	All	31	138	47
46	All	33	138	47
46	All	35	138	47
46	All	1	141	47
46	All	3	141	47
46	All	5	141	47
46	All	7	141	47
46	All	9	141	47
46	All	11	141	47
46	All	13	141	47
	All	15	141	47
	All	17	141	47
46	N ½ of n e ¼ and n ½ of n w ¼	19	141	47
46	N ½ of n e ¼ and n ½ of n w ¼	21	141	47
46	N ½ of n e ¼ and n ½ of n w ¼	23	141	47
46	All	1	142	47
46	All	3	142	47
46	All	5	142	47
46	All	7	142	47
46	All	9	142	47
46	All	11	142	47
47	All	13	142	47
47	All	15	142	47
47	All	17	142	47
47	All	19	142	47
47	All	21	142	47
47	All	23	142	47
47	All	25	142	47
47	All	27	142	47
47	All	29	142	47
47	All	31	142	47
47	All	33	142	47

Schedule B—Continued.

Subdivision of sections.	Section.	Town.	Range.
All	35	142	47
S ½ of n w ¼, s ½ of n e ¼, and s ½	31	143	47
557 S ½ of n w ¼, s ½ of n e ¼, and s ½	33	143	47
S ½ of n w ¼, s ½ of n e ¼, & s ½	35	143	47
N e ¼	21	141	48
N ½	1	142	48
All	3	142	48
E ½	9	142	48
All	11	142	48
All	13	142	48
E ½	15	142	48
All	23	142	48
S ½ of n e ¼, s ½ of n w ¼, and s ½	35	142	48
S ½ of n e ¼, s ½ of n w ¼, and s ½	35	143	48

558 SCHEDULE C.

NOTE.—In this schedule N stands for north, S stands for south, E stands for east, W stands for west, N E stands for northeast, N W stands for northwest, S E stands for southeast, S W stands for southwest.

Subdivision of section.	Section.	Town.	Range.
Lot 8	3	132	39
N ½, n ½ of s w ¼, n w ¼ of s e ¼, and e ½ of s e ¼	5	132	39
All	7	132	39
All	9	132	39
S w ¼ of n e ¼, s ½ of n w ¼, s w ¼, and w ½ of s e ¼	11	132	39
N w ¼ and n ½ of s w ¼	5	132	40
N e ¼ of n e ¼	7	132	40
E ½ of n w ¼, n w ¼ of s w ¼, w ½ of n w ¼, and lots 3 and 4	11	132	40
W ½	19	133	40
Lot 6	21	133	40
Lot 3	29	133	40
Lot 8	31	133	40
Lots 1, 2, and 6	33	133	40
Lots 2, 5, 6, n w ¼, and s ½	3	133	41
All	5	133	41
559 Lots 1, 2, 3, 4, and 5	9	133	41
All	11	133	41
All	13	133	41
N ½ and lots 3, 6, 7, and 8	15	133	41
N ½, e ½ of s w ¼, and lots 1 and 2	23	133	41
Lots 1, 2, 3, 4, 5, 6, 7, and 8	25	133	41
S ½, n w ¼, and w ½ of n e ¼	19	134	41
N e ¼ and lots 2, 3, 4, 5, 6, and 9	29	134	41

Schedule C—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 and s e ¼ of s e ¼	31	134	41
	S w ¼, e ½ of n w ¼, n w ¼ of n e ¼, and lots 1, 2, 3, 4, 5, 6, 7, 8, and 9	33	134	41
	W ½, s e ¼, and w ½ of n e ¼	3	134	42
	All	5	134	42
	All	9	134	42
	W ½, s ½ of s e ¼, and lots 2, 6, 7, and 8	11	134	42
	W ½, s e ¼, and w ½ of n e ¼	13	134	42
	All	15	134	42
	All	23	134	42
	All	25	134	42
	W ½ and s ½ of s e ¼	7	135	42
	W ½ of s w ¼	17	135	42
560	S e ¼ of n e ¼, w ½ of n e ¼, n w ¼, s w ¼ of s w ¼, e ½ of s w ¼, and s e ¼	19	135	42
	All	29	135	42
	N ½, e ½ of s w ¼, and s e ¼	31	135	42
	W ½, w ½ of n e ¼, and s e ¼	33	135	42
	W ½ of s e ¼ and s ½ of n e ¼	1	135	43
	N e ¼, n w ¼ of n w ¼, w ½ of s e ¼, and n e ¼ of s e ¼	3	135	43
	All	11	135	43
	N e ¼, w ½, w ½ of s e ¼, and n e ¼ of s e ¼	13	135	43
	N e ¼ of n w ¼ and lots 1 and 2	23	135	43
	N ½ and e ½ of s e ¼	25	135	43
	N e ¼ of n e ¼ and lots 4, 5, 7, and 8	19	136	43
	S e ¼ of n w ¼, w ½ of n w ¼, w ½ of s e ¼, and n e ¼ of s e ¼	21	136	43
	All	27	136	43
	N e ¼ of n w ¼ and n w ¼ of n e ¼	29	136	42
	E ½ of n e ¼, n w ¼ of n e ¼, n ½ of n w ¼, and e ½ of s e ¼	33	136	43
	N e ¼, w ½, w ½ of s e ¼, and s e ¼ of s e ¼	35	136	43
	All	3	143	44
561	All	5	143	44
	All	7	143	44
	All	9	143	44
	All	11	143	44
	All	15	143	44
	All	17	143	44
	N ½ of s w ¼ and s e ¼, n ½	19	143	44
	N ½, n ½ of s w ¼, and n ½ of s e ¼	21	143	44
	N e ¼, e ½ of n w ¼, s w ¼ of n w ¼, n ½ of s w ¼, and n ½ of s e ¼	23	143	44
	All	1	143	45
	All	3	143	45

Schedule C—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	5	143	45
	All	7	143	45
	All	9	143	45
	All	11	143	45
	All	13	143	45
	All	15	143	45
	All	17	143	45
	All	19	143	45
	All	21	143	45
	All	23	143	45
	N ½ of n e ¼ and n ½ of n w ¼	25	143	45
	N ½, n ½ of s e ¼, and n ½ of s w ¼	27	143	45
	All	29	143	45
562	N ½ of n w ¼ and n ½ of n e ¼	31	143	45
	S ½ of n w ¼, s ½ of n e ¼, and s ½	1	144	45
	S ½ of s w ¼ and s ½ of s e ¼	3	144	45
	S ½ of n w ¼, s ½ of n e ¼, and s ½	7	144	45
	All	9	144	45
	All	11	144	45
	All	13	144	45
	All	15	144	45
	All	17	144	45
	All	19	144	45
	All	21	144	45
	All	23	144	45
	All	25	144	45
	All	27	144	45
	All	29	144	45
	All	31	144	45
	All	33	144	45
	All	35	144	45
	All	1	143	46
	All	3	143	46
	All	5	143	46
	All	7	143	43
	All	9	143	46
	All	11	143	46
	All	13	143	46
	All	15	143	46
563	All	17	143	46
	All	19	143	46
	All	21	143	46
	All	23	143	46
	All	25	143	46
	All	27	143	46
	All	29	143	46
	N ½ of n w ¼, n ½ of n e ¼	31	143	46

Schedule C—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	N ½ of n w ¼ and n ½ of n e ¼	33	143	46
	N ½ of n w ¼ and n ½ of n e ¼	35	143	46
	S ½ of n w ¼, s ½ of n e ¼, and s ½	7	144	46
	S ½ of n w ¼, s ½ of n e ¼, and s ½	9	144	46
	S ½ of n w ¼, s ½ of n e ¼, and s ½	11	144	46
	S ½ of n w ¼, s ½ of n e ¼, and s ½	13	144	46
	All	15	144	46
	All	17	144	46
	All	19	144	46
	All	21	144	46
	All	23	144	46
	All	25	144	46
	W ½ of s w ¼, s e ¼ of s w ¼, s w ¼ of s e ¼, e ½ of s e ¼, and n ½	27	144	46
564	All	29	144	46
	All	31	144	46
	All	33	144	46
	All	35	144	46
	All	1	143	47
	All	3	143	47
	All	5	143	47
	All	7	143	47
	All	9	143	47
	All	11	143	47
	All	13	143	47
	All	15	143	47
	All	17	143	47
	All	19	143	47
	All	21	143	47
	All	23	143	47
	All	25	143	47
	All	27	143	47
	All	29	143	47
	N ½ of n w ¼ and n ½ of n e ¼	31	143	47
	N ½ of n w ¼ and n ½ of n e ¼	33	143	47
	N ½ of n w ¼ and n ½ of n e ¼	35	143	47
	S ½ of n w ¼, s ½ of n e ¼, and s ½	7	144	47
	S ½ of n w ¼, s ½ of n e ¼, and s ½	9	144	47
	S ½ of n w ¼, s ½ of n e ¼, and s ½	11	144	47
565	All	13	143	47
	All	15	143	47
	All	17	143	47
	All	19	143	47
	All	21	143	47
	All	23	143	47
	All	25	143	47
	All	27	143	47

Schedule C—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	29	143	47
566	All	31	144	47
	All	33	144	47
	All	35	144	47
	All	1	143	48
	E ½ and n w ¼	3	143	48
	All	21	143	48
	S e ¼	23	143	48
	All	25	143	48
	All	27	143	48
	N e ¼, n e ¼ of n w ¼, n w ¼ of s e ¼, e ½ of s e ¼, and s e ¼ of n w ¼	29	143	48
	N ½ of n w ¼ and n ½ of n e ¼	35	143	48
	S ½ of n e ¼, s ½ of n w ¼, and s ½	7	144	48
	S ½ of n e ¼, s e ¼, s w ¼, and s e ¼ of n w ¼	9	144	48
	S ½ of n e ¼, s ½ of n w ¼, and s ½	11	144	48
	All	13	144	48
	All	15	144	48
	All	17	144	48
	E ½ of n e ¼, s w ¼ of n e ¼, n w ¼, and s ½	19	144	48
	All	21	144	48
	All	23	144	48
	All	25	144	48
	All	27	144	48
567	All	29	144	48
	All	31	144	48
	All	33	144	48
	All	35	144	48

568

SCHEDULE D.

NOTE.—In this Schedule N stands for north, S stands for south, E stands for east, W stands for west, N E stands for northeast, N W stands for northwest, S E stands for southeast, S W stands for southwest.

Subdivision of section.	Section.	Town.	Range.
All	19	145	44
All	21	145	44
All	29	145	44
All	31	145	44
All	33	145	44
N ½ of n e ¼ and n ½ of n w ¼	1	144	45
N ½, n ½ of s e ¼, and s ½ of s w ¼	3	144	45
All	5	144	45
N ½ of n e ¼ and n ½ of n w ¼	7	144	45
All	1	145	45
All	3	145	45

Schedule D—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	All	5	145	45
	All	7	145	45
	All	9	145	45
	All	11	145	45
	All	13	145	45
569	All	15	145	45
	All	17	145	45
	All	19	145	45
	All	21	145	45
	All	23	145	45
	All	25	145	45
	All	27	145	45
	All	29	145	45
	All	33	145	45
	All	35	145	45
	All	19	146	45
	All	21	146	45
	All	29	146	45
	All	31	146	45
	All	33	146	45
	All	1	144	46
	All	3	144	46
	All	5	144	46
	N ½ of n e ¼ and n ½ of n w ¼	7	144	46
	N ½ of n e ¼ and n ½ of n w ¼	9	144	46
	N ½ of n e ¼ and n ½ of n w ¼	11	144	46
	All	1	145	46
	All	3	145	46
	All	5	145	46
	All	7	145	46
	All	9	145	46
570	All	11	145	46
	All	13	145	46
	All	15	145	46
	All	17	145	46
	All	19	145	46
	All	21	145	46
	All	23	145	46
	All	25	145	46
	All	27	145	46
	All	29	145	46
	N ½	31	145	46
	All	33	145	46
	All	35	145	46
	S ½ of n e ¼, s ½ of n w ¼, and s ½	19	146	46
	S ½ of n e ¼, s ½ of n w ¼, and s ½	21	146	46
	S e ¼ of n e ¼, s w ¼ of n w ¼, and s ½	23	146	46

Schedule D—Continued.

	Subdivision of sections.	Section.	Town.	Range.
	N ½ of n w ¼, s ½ of s w ¼, and e ½	25	146	46
	All	27	146	46
	All	29		
	All	31	146	46
	All	33	146	46
	All	35	146	46
	All	1	144	47
	All	3	144	47
571	All	5	144	47
	N ½ of n w ¼ and n ½ of n e ¼	7	144	47
	N ½ of n w ¼ and n ½ of n e ¼	9	144	47
	N ½ of n w ¼ and n ½ of n e ¼	11	144	47
	All	1	145	47
	S w ¼ of n w ¼, s w ¼, and s ½ of s e ¼	7	145	47
	All	13	145	47
	N ½ n e ¼, of s w ¼, and s e ¼	19	145	47
	All	21	145	47
	All	23	145	47
	All	25	145	47
	All	27	145	47
	E ½ of n e ¼, n w ¼ of n e ¼, and n e ¼ of n w ¼	29	145	47
	All	33	145	47
	All	35	145	47
	S ½	35	146	47
	All	1	144	48
	All	3	144	48
	All	5	144	48
	N ½ of n w ¼ and n ½ of n e ¼	7	144	48
	N ½ of n e ¼ and n e ¼ of n w ¼	9	144	48
	N ½ of n e ¼ and n ½ of n w ¼	11	144	48
	All	1	145	48
572	N ½, n w ¼ of s w ¼, e ½ of s w ¼, and s e ¼	3	145	48
	N ½, e ½ of s w ¼, and s e ¼	7	145	48
	All	13	145	48
	W ½ of n w ¼, s w ¼, s w ¼ of s e ¼	17	145	48
	E ½, e ½ of n w ¼, e ½ of s w ¼, and lots 1 and 2	19	145	48
	All	29	145	48
	All	31	145	48
	S ½ of n e ¼, s ½ of n w ¼, and s ½	19	146	48
	S ½ of n e ¼, s ½ of n w ¼, and s ½	21	146	48
	S ½ of n e ¼, s ½ of n w ¼, and s ½	23	146	48
	All	25	146	48
	All	27	146	48
	All	29	146	47
	All	31	146	48
	S w ¼ and n ½	33	146	48

Schedule B—Continued.

Subdivision of sections.	Section.	Town.	Range.
All	35	146	48
S w ¼ of n e ¼ and lots 4 and 5	1	145	49
Lot 4	13	145	49
Lot 1	23	145	49
573 S e ¼ of n e ¼, n e ¼ of s e ¼, and lots 2, 3, 4, and 5	25	145	49
Lots 1 and 2	23	146	49
E ½ of n w ¼, e ½ of s w ¼, e ½, and lots 1, 2, 3, and 4	25	146	49
Lots 1, 2, 3, and 4	35	146	49

Filed Dec. 24th, 1886.

OSCAR B. HILLIS, *Clerk.*

574 And afterwards, to wit, on the 21st day of January, 1887, the following notice to Jesse P. Farley, receiver, was filed in the words and figures following, viz:

Notice to J. P. Farley, Receiver.

575 Circuit Court of the United States for the District of Minnesota. In Equity. Dec. Term, 1886.

Notice to Jesse P. Farley, rec'r, &c.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD Company, Jesse P. Farley, Receiver, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, Trustees, &c., Defendants,
} Original Bill.

and

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Complainant,
vs.
THE NORTHERN PACIFIC RAILROAD
576 COMPANY, Defendants.
} Supplemental Bill in the Nature of a Cross-Bill.

To Jesse P. Farley, receiver, &c., one of the above-named defendants.

SIR: You are hereby notified and required to be and appear before the said court, at the United States court-room, in the city of St. Paul, in said district, on Friday, the 21st day of January, A. D. 1887, at 10 o'clock a. m., and then and there, together with the said Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trus-

tees, &c.; the St. Paul & Pacific Railroad Co., and the St. Paul,
577 Minneapolis and Manitoba Railway Company, pray, apply for, and perfect with said other parties an appeal from the decree of said other court in said cause, dated Dec. 24th, 1886, to the Supreme Court of the United States, and in default of your so doing the said Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, &c., the St. Paul and Pacific Railroad Company, and the St. Paul, Minneapolis and Manitoba Railway Co. will then and there apply to said court for an order of severance and pray an appeal from said decree to the Supreme Court of the United States in their own names and separate and apart from you, the said Jesse P. Farley, receiver as aforesaid.

Dated January 5th, 1887.

R. B. GALUSHA,

578 *Solicitor for the St. Paul and Pacific R. R. Co., J. S. Wetmore, Thomas Denny, and T. W. Pearsall, Trustees, &c., and the St. Paul, Minneapolis and Manitoba Railway Company.*

579 STATE OF IOWA, } *ss:*
County of Dubuque, }

Bart E. Lenehan, being duly sworn, says that on the eighth day of January, A. D. 1887, at the city of Dubuque, in said county, he personally served the notice of which the foregoing is a true copy upon Jesse P. Farley, therein named, by delivering to and leaving with him the said notice; and affiant further says that he is of the age of 21 years and upwards, and knows that the person so served by him with said notice is the same Jesse P. Farley who was formerly the receiver of the St. Paul & Pacific railroad under
580 appointment of the United States circuit court for the district of Minnesota.

BART E. LINNEHAN.

Subscribed and sworn to this 8th day of January, A. D. 1887, before me—

[SEAL.] J. C. LONGEVILLE,
Notary Public, Dubuque County, Iowa.

581 Personal service of the within notice, at St. Paul, Minnesota, on this — day of January, A. D. 1887, is admitted.

——— ———,
Sol's for Defendant, Jesse P. Farley, &c.

STATE OF MINNESOTA, } *ss:*
County of Ramsey, }

Edward B. Young, being duly sworn, makes oath and says that he is of the age of 21 years and upwards, and that on the 10th day of January, A. D. 1887, in the city of St. Paul, in said county, he served the notice of which the within is a copy upon I. V. D. Heard, Esq., solicitor for the within-named defendant, Jesse P. Far-
582 ley, at his office, in the said city, by delivering to and leaving the same with the clerk of said I. V. D. Heard, who was then

and there in charge of said office, the said Heard being then absent therefrom.

EDWARD B. YOUNG.

Subscribed and sworn to before me this 10th day of January, A. D. 1887.

[SEAL.] W. H. YARDLEY,
Notary Public, Ramsey Co., Minnesota.

Filed January 21st, 1887.

OSCAR B. HILLIS, *Clerk.*

583 And afterwards, to wit, on the 21st day of January, 1887, the following further proceedings were had and entered of record in Term Minutes "G," page 438, in the words and figures following:

Order Allowing an Appeal.

584 Order of severance and allowance of appeal to the U. S. Supreme Court.

Circuit Court of the United States for the District of Minnesota. Term Minutes, December Term, A. D. 1886. January 21st, A. D. 1887.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant, *vs.* THE ST. PAUL & PACIFIC RAILROAD COMPANY, Jesse P. Farley, Receiver; Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, Trustees, &c., Defendants.	Original Bill.

585 and

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Complainant, *vs.* THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.	Supplemental Bill in the Nature of a Cross-Bill.

This day come the St. Paul & Pacific Railroad Company, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, &c., and the St. Paul, Minneapolis and Manitoba Railway Company, by their solicitor, and in open court prayed an appeal to the Supreme Court of the United States from the decree of this court made and rendered in this cause on the 24th day of December, 1886, in this present December term, 1886.

586 And on reading and filing due proof of service of notice upon the said Jesse P. Farley, receiver, &c., to appear before this court on this day and to pray, apply for, and perfect with said other parties an appeal from the decree of this court in said cause

dated December 24th, 1886, and made in this present term to the Supreme Court of the United States—

And the said Jesse P. Farley, receiver, &c., having wholly failed to appear, pray, apply for, or perfect such appeal with said other parties, it is ordered that the application of the said St. Paul and Pacific Railroad Company, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, &c., and the St. Paul, Minneapolis and
587 Manitoba Railway Company, separate and apart from the said Jesse P. Farley, receiver, &c., for an appeal to the Supreme Court of the United States from the said decree made in this present term, dated December 24th, 1886, be, and the same is hereby, allowed upon the said appellants, The Saint Paul and Pacific Railroad Company, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, &c., and the Saint Paul, Minneapolis and Manitoba Railway Company, giving good and sufficient security in the sum of five thousand dollars that the said appellants shall prosecute their appeal to effect, and if they fail to make their plea good shall answer all damages and costs, and that upon the giving of said bond, approved by a judge of this court, all proceedings under said decree be stayed until the hearing and determination of said appeal.

588 Dated January 21st, A. D. 1887.

R. R. NELSON, *Judge.*

Filed January 21st, 1887.

OSCAR B. HILLIS, *Clerk.*

589 And on the same day, to wit, the 21st day of January, A. D. 1887, an appeal bond was filed in the words and figures following, viz:

Appeal Bond.

590 In the Circuit Court of the United States for the District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Plaintiffs, *vs.* THE ST. PAUL AND PACIFIC RAILROAD COMPANY, Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, Trustees, &c., and Jesse P. Farley, Receiver, etc., Defendants.	Original Bill.
591 THE SAINT PAUL, MINNEAPOLIS and MANITOBA RAILROAD COMPANY *vs.* THE NORTHERN PACIFIC RAILROAD COMPANY.	Supplemental Bill in the Nature of a Cross-Bill.

Know all men by these presents that we, the Saint Paul, Minneapolis & Manitoba Railway Company, for itself and upon behalf of the above-named defendants, The Saint Paul and Pacific Railroad Company and Jacob S. Wetmore, Thomas W. Pearsall, and

Thomas Denny, trustees, as principal, and James J. Hill,
592 of St. Paul, Minnesota, as surety, are held and firmly bound unto the Northern Pacific Railroad Company in the sum of twenty-five thousand dollars, lawful money of the United States, to be paid to the said Northern Pacific Railroad Company, its successors or assigns; for which payment, well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of January, A. D. 1887.

593 The condition of this obligation is such that whereas, at the December term, A. D. 1886, of the circuit court of the United States for the district of Minnesota, in the cause above entitled, then pending in said court, a final decree was by said court made and entered in favor of said Northern Pacific Railroad Company on its original bill and dismissing the said bill of said St. Paul, Minneapolis and Manitoba Railway Company, which decree was signed and entered the 24th day of December, A. D. 1886;

And whereas thereafter, at the same term of said court and on the 21st day of January, A. D. 1887, the said St. Paul & Pacific Railroad Company and the said Wetmore, Pearsall, and
594 Denny, trustees, etc., and the said St. Paul, Minneapolis and Manitoba Railway Company did, in open court, pray an appeal from said decree to the Supreme Court of the United States, which appeal was by the said court then and there duly allowed:

Now, therefore, if the said appellants shall prosecute their said appeal to effect and shall answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise in full force.

[Seal of Corporation.]

ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY,
By JAS. J. HILL, *President.*
E. SAWYER, *Secretary.*
JAMES J. HILL. [SEAL.]

I consent to the allowance of the within bond.

W. P. CLOUGH,
Solicitor for N. P. R. R. Co., Appellee.

The within bond is hereby approved.
Dated January 21st, 1887.

R. R. NELSON, *Judge.*

Filed January 21st, 1887.

OSCAR B. HILLIS, *Clerk.*

595 And afterwards, to wit, on the 7th day of June, A. D. 1887, the following order as to maps, etc., was filed in this cause in the words and figures following, viz:

Stipulation as to Maps, etc.

596 United States Circuit Court, District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC R. R. Co. *et al.*

THE ST. PAUL, MINNEAPOLIS & MANITOBA R'Y CO.
vs.
THE NORTHERN PACIFIC R. R. Co.

It appearing to the court that the original maps and plats introduced in evidence in this cause and on file with the clerk of this court should be inspected in the Supreme Court of the United States upon the appeal heretofore taken from the final decree in this cause, and the parties to said cause having stipulated that such originals may be transmitted to and used in said Supreme Court in lieu of copies, and that such originals remain in the custody of the clerk of this court until needed for use upon the hearing of such appeal—

It is ordered that the clerk of this court retain said originals in his custody until such reasonable time before the hearing of said cause as will be sufficient for the transmission of the same to said Supreme Court in season for use on the hearing of such appeal, and that he do then, on the request of either party, transmit the same to the clerk of said Supreme Court for use upon such hearing.

Dated June 7th, 1887.

R. R. NELSON, *Judge.*

Endorsed: Filed June 7th, 1887. Oscar B. Hillis, clerk.

596½ The said cause was heard upon the following testimony introduced by the respective parties and upon certain maps and plats introduced in evidence as exhibits, which are retained in the said circuit court pursuant to the order thereof made June 7th, 1887, and appearing on page 596 of this reutrn.

597 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

Testimony on Part of Plaintiff, with Exhibits and Statutes Referred to.

598 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY *et al.*

ST. PAUL, MINN., *Sept.* 12, 1877.

The plaintiff appeared by John B. Sanborn, Esq., one of its so-

licitors, and the defendants, Wetmore, Denny, and Pearsall, trustees, by Geo. L. Otis, Esq., their solicitor, and the defendant, J. P. Farley, receiver, by I. V. D. Heard, Esq., his solicitor.

Plaintiff offers in evidence the map of the Northern Pacific railroad in Minnesota as the same is constructed, which is marked Exhibit "1," and is herewith returned; also the memorandums made upon said map by or under the direction of the General Land Office as to withdrawal and dates of withdrawal of public lands under the provisions of the grant to the plaintiff upon the filing of the
599 plats by the plaintiff corporation of general route, and also upon filing maps of definite location with colored lines indicating the line of definite location and the withdrawals thereunder and lines indicating the withdrawals on the location of the general route and lines indicating the limits of the several land districts through which the route passes in Minnesota, said memorandums and lines being a certified copy of maps, plats, and dates of withdrawals from the originals on file in the General Land Office showing the limits of the grants to the plaintiff, the original of Exhibit "1" having been made by and filed in the General Land Office after the 21st of November, 1871, after the line was definitely located, as stated on said map and in plaintiff's bill.

Objected to by counsel for defendants appearing above as incompetent, irrelevant, and immaterial.

Plaintiff offers in evidence copy of a map exhibiting amendment of line of location of general route of Northern Pacific R. R. in Minnesota and memorandum of receipt of same Oct. 12, 1870, the dotted red line thereon indicating the original line of general route and the full red line thereon the amended line of general route, which is marked Exhibit "2" and herewith returned.

Objected to by counsel for said defendants as immaterial.

Plaintiff offers a copy of a map showing the definite location of the Northern Pacific railroad in Minnesota, certified by the Commissioner of the General Land Office, with the affidavit of D. C. Lindsley, assistant engineer, and the certificate of J. Gregory Smith, president, and Samuel Wilkeson, secretary of the plaintiff corporation, and the memorandum thereon of the receipt of the same
600 at the General Land Office Nov. 21, 1871, which is marked Exhibit "3" and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence copy of map showing the location of general route of the Northern Pacific railroad from its initial point on Lake Superior through the State of Minnesota, bearing date July 26, 1870, certified by the Commissioner of the General Land Office, and signed by J. Gregory Smith, president, and Edwin F. Johnson, engineer-in-chief of plaintiff corporation, with a memorandum of the date of the receipt of the same at the General Land Office, dated Aug. 15, 1870, said map being marked Exhibit "4;" the full red

line on this map indicating the same route as the dotted line on Exhibit No. "2." Exhibit "4" is herewith returned.

Same objection.

Plaintiff offers certified copy of letter of the Secretary of Interior to the Hon. Commissioner of the General Land Office, of date Aug. 17, 1870, marked Exhibit "A."

Objected to as immaterial.

Plaintiff also offers letter of same officer to same officer, of date October 17, 1870, marked Exhibit "B."

Same objection.

Plaintiff also offers in evidence certified copy of an affidavit of Edwin F. Johnson, engineer-in-chief of the Northern Pacific R. R. Co., sworn to on the 6th day of October, 1870, and the certificate of J. Gregory Smith, president, and Edwin F. Johnson, engineer-in-chief of plaintiff corporation, dated October 1st, 1870, which is marked Exhibit "C."

Same objection.

Plaintiff also offers in evidence certified copy of a letter
601 from the Secretary of the Interior to the Commissioner of the General Land Office, of date November 20, 1871, which is marked Exhibit "D."

Same objection.

Plaintiff also offers in evidence certified copy of a letter of the acting Secretary of the Interior to the Commissioner of the General Land Office, of date January 7, 1873, marked Exhibit "E."

Same objection.

Plaintiff also offers in evidence copy of a letter of the acting Secretary of ths Interior to the President of the United States, of date January 6, 1873, which is marked Exhibit "F," the offer including the indorsements and certificates thereon.

Same objection.

Plaintiff offers certified copy of a letter of the acting Secretary of the Interior to the Commissioner of the General Land Office, of date April 3, 1874, which is marked Exhibit "G."

Same objection.

Plaintiff also offers in evidence a letter from Jesse P. Farley, receiver of the St. Paul & Pacific R. R. Co., to Horace Austin, attorney for said receiver, of date March 31, A. D. 1874, which is marked Exhibit "H."

Same objection.

Plaintiff also offers in evidence a certified copy of a letter and decision of the Secretary of the Interior, transmitted to the Commissioner of the General Land Office, dated May 13, 1873, marked Exhibit "I."

Exhibits marked Exhibits "A," "B," "C," "D," "E," "F,"
602 "G," "H," and "I" are attached together under one certificate, in one paper, which is marked Exhibit "5" and is herewith returned.

Plaintiff offers in evidence certified copy of a map or plat showing the location of the St. Vincent Extension of the St. Paul & Pacific R. R., with the certificate of Edmund Rice, president, and Chas. A. F. Morris, chief engineer, of the defendant corporation, the same being the certificate of said corporation dated November 7, 1871, with the affidavit of Chas. A. F. Morris, chief engineer, of the same date, and the certificate of Horace Austin, Governor of the State of Minnesota, of the same date, said map showing the dates of the definite location and the said location as the same progressed from day to day along said line, which copy map is marked Exhibit "6" and herewith returned.

Plaintiff also offers in evidence certified copy of a map of the location of the St. Paul & Pacific R. R. from Crow Wing to a point near the center of the tier of townships number 142, with the certificate of Edmund Rice, president; David C. Shepard, chief engineer of the defendant corporation; the affidavit of David C. Shepard, chief engineer, and the certificate of Wm. R. Marshall, Governor of Minnesota, the certificate and affidavit bearing date Oct. 19, 1869, and the certificate of the Governor bearing date the 27th day, which is marked Exhibit "7" and hereto attached.

Objected to by said defendants as immaterial.

Plaintiff offers in evidence a certified copy of a letter of the Secretary of the Interior to D. S. Norton, U. S. Senator, of date Feb. 16, 1870, which is marked Exhibit "A."

Objected to by said defendants as immaterial and irrelevant
603 and because the authority of Mr. Norton is not shown to represent the company, and that it is merely an expression of the opinion of Secretary Cox upon the construction of the grant to defendant railroad company.

Plaintiff also introduces copy of a letter from the Secretary of the Interior to Wm. R. Marshall, Governor of Minnesota, dated February 17, 1870, which is marked Exhibit "B."

Objected to as immaterial.

Plaintiff also offered copy of letter from Secretary of the Interior to the Commissioner of the General Land Office, of date June 18, 1872, which is marked Exhibit "C."

Objected to as incompetent, irrelevant, and immaterial.

Exhibits "A," "B," and "C" are in one paper attached together and marked Exhibit "8."

Plaintiff offers in evidence certified copy of a letter from the Commissioner of the General Land Office to the register and receiver of the land office at Alexandria, Minn., of date February 6, 1872, marked Exhibit "A."

Objected to as incompetent, irrelevant, and immaterial.

Plaintiff also offers copy of letter of the Commissioner of the General Land Office to the register and receiver at the U. S. land office at Oak Lake, Minn., dated June 25, 1872, marked Exhibit "B."

Plaintiff offers copy letter of the Commissioner of the General Land Office to the register and receiver of the U. S. land office at Oak Lake, Minn., dated April 7, 1873, marked Exhibit "C."

Objected to as incompetent, irrelevant, and immaterial.

Plaintiff also offers certified copy of letter from the Commissioner of the General Land Office to the register and receiver of the U. S. land office of Oak Lake, Minn., dated July 9, 1873, marked Exhibit "D."

Same objection as last above.

604 The Exhibits "A," "B," "C," and "D" last above are attached together in one package or paper, under one certificate, and marked Exhibit "9" and herewith returned.

THOMAS L. ROSSER, a witness produced on the part of the plaintiff, being first duly sworn, deposes and says:

Q. Where do you reside and what is your occupation?

A. I reside at Minneapolis, Minnesota; am a civil engineer by profession.

Q. State whether you have born employed by the plaintiff in the capacity of engineer.

A. I have been since 1870—February, 1870; continuously until the fall of 1873, and at intervals since that time.

Q. State what was done by the plaintiff in surveying and locating its line of route in Minnesota in the year 1870 and as near as you can recollect during the respective months of said year.

A. The line was located from the junction with the Lake Superior & Mississippi R. R. to a point four and one-half miles east of Brainerd in the months of April, May, June, July, and August; also during the same months (I am referring entirely now to the definite location) from Crow Wing river to Wadena and from Perham to a point about a mile west of Oak Lake. I was a principal assistant of the chief engineer of the division and had charge of the location of the line. During the month of November, as near as I can fix it now, the gap between Crow Wing river and the point referred to as four and one-half miles east of Brainerd was filled in.

Q. When was the survey of the line of definite location completed?

605 A. In July, 1871, it was completed to Moorhead, on Red River; during the winter of 1870 and 1871 we filled the gap from Wadena to Perham, and in the spring and summer, finishing about the last of July, we filled the gap from a mile or so west of Oak Lake to Moorhead.

Q. In making this survey what was done on the ground?

A. The line was measured with a one-hundred-foot chain, stakes being driven at the end of each chain of one hundred feet, upon which stake was written the cut or fill as determined by the profile of the center line, and at right angles to this line, at intervals of one hundred feet, side stakes were driven, indicating the slopes for the road-bed.

Q. State whether the Northern Pacific railroad was constructed and is operated upon this line surveyed by you as above stated.

A. It was and is operated on that line now.

Q. When was the construction of the line completed to Moorhead, on the Red River?

A. About the last week of December, 1871.

Q. When was it completed to Glyndon, the intersection of the St. Paul & Pacific?

A. About the 1st of December, 1871.

Q. To what point was the road completed on the 1st day of November, 1871?

A. I think they were laying the track about the last crossing of the Buffalo, near the Red River flats.

Q. State whether you located any portion of the line of general route as exhibited on Exhibit "2" or have any knowledge of the location of that line.

A. The engineer-in-chief having determined to locate the line through Dakota, by Devil's Lake, in the summer of 1870,
606 and the crossing of Red River being established near the mouth of Wild Rice, so indicated on the map, we amended our location from the point west of Oak Lake, as indicated by the full red line on Exhibit "2."

Q. State what was done on the ground in making this amended line of general route and when it was done.

A. The distance was measured and surface profile obtained. I think it was in July or August, 1870. It was in the summer of 1870, at all events.

Q. State whether you know the present condition of the St. Paul & Pacific railroad and its branches, as relating to construction and completed road.

A. There is a completed road from St. Paul to Breckenridge and from St. Anthony Junction to Melrose. There is no other completed road belonging to the company that I know of.

Q. When did this corporation do the last work of construction?

A. I am not positive, but I think it was in the fall of 1872.

Q. State whether there is any equipment or station-houses between Melrose and St. Vincent.

A. There are no station-houses or equipment between Melrose and Glyndon, over one hundred and fifty miles; there is no machinery belonging to the company on the road from Glyndon to its terminus, and no rolling stock, with the exception of two cars, a baggage car and a coach. There are no water-stations, except the merest temporary affairs, which will freeze up in winter if not protected in the fall; and there are no quarters for men engaged in

maintaining the way-station-houses, and from Glyndon to
607 Crookston, a distance of 65 miles, only one station-house.
That is the condition I found the road in when making an inspection for the Governor of the State a few weeks ago. A portion of the track north of Glyndon, which had been laid, I found the track torn up, the iron and the ties taken away, and the road abandoned.

Examination of this witness-in-chief ceased. Examination continued until 13th Sept., 1877, at 2 p. m.

THURSDAY, *Sept.* 17, 1877.

The said parties appeared again by their said solicitors, and the examination of the witness ROSSER is resumed.

Cross-examination:

Witness shown Exhibit 2, and is asked to explain Exhibit 2 with reference to townships and ranges.

A. The squares inclosed with black lines represent townships of 6 miles square. The figures on the perpendicular columns represent the number of the township. The Roman figures in horizontal columns denote ranges.

Q. Now please describe the location of the amended line of general route of plaintiff's road as delineated on map, Exhibit 2, with reference to congressional townships thereon.

A. The amended line commences on the Red River at the northwest corner of township one hundred forty-four of range 48, thence on a direct line southeasterly to the northwest corner of township one hundred thirty-five, range thirty-nine; thence on a direct line east on the north line of township one hundred and thirty-five to the west line of range twenty-nine; thence on a direct line
608 through the tier of townships 136 to the Mississippi river, intersecting said river in said township 136; thence through townships of tier 48, as said townships are numbered east of the Mississippi river, the townships east of said river being numbered according to a different standard and meridian from those west of said river. Said townships west of the Mississippi river are all numbered with reference to the same standard parallel and meridian.

Q. Witness' attention is called to map, Exhibit No. 1, and is asked to describe the line of definite location as it appears on said map with reference to towns and ranges.

A. The map is checked off into squares indicated by heavy black lines representing congressional townships. The smaller squares within each township represented by lighter black lines indicate 40-acre subdivisions, the figures indicating sections. The line of definite location commences on the Red River, in section 7, township 139, range 48; thence easterly on a line directly east to section 10, town 139, of range 45; thence deflecting northerly to section 34, town 140, range 44; thence due east to section 32, town 140, range 43; thence southeasterly through the northeast corner of town 139,

range 43; thence through town 139, range 42, and the southwest corner of town 139, range 41; thence across the northeast corner of town 138, range 41; thence southeasterly through southeast corner of town 138, range 40, and northeast corner town 137, range 40, and southeast corner town 137, range 39, and northeast corner town 136, range 39; southeast corner town 136, range 38; northeast corner town 135, range 38, diagonally through town 135, range 37, across south end of town 135, range 36, through section 1 of town
609 134, range 36; thence diagonally through town 134, range 35; thence through southwest corner town 134, range 34; thence along north end town 133, range 33; thence along north end town 133, range 32; thence through town 133, range 31, and town 133, range 30, and town 133, range 29; thence into township 133, range 28, intersecting the river in section 8, in said last-named town and range, said line of definite location, as thus described by me, being represented on said map by the full red line upon which is written The Northern Pacific R. R.

The six practically parallel lines, 3 upon each side of the line last described, colored, respectively, pink, yellow, and gray, represent, respectively, the 20, 30, and 40 mile limit of definite location; the two blue lines, practically parallel to each other, appertain to the general route, and the two brown lines, practically parallel, appertain to the general route as amended.

Q. Witness is asked to mark upon Exhibit "3" the following points referred to in his direct examination: The point 4 miles east of Brainerd, Crow Wing river, Wadena, Perham, Oak Lake.

A. Witness writes the names of the places and marks them with red ink on the map.

Witness further says that said line of definite location was all made, as I have stated in my direct examination, prior to the 31st of December, 1870, except the line between Wadena and Perham and the line between Oak Lake and Moorhead. The line between Wadena and Perham was closed by the 1st of March, 1871, and the line from Oak Lake to Moorhead was closed prior to August 17, 1871, making the whole line of definite location complete prior to August 17, 1871.

610 Q. State the distance from the northeast corner of township 140, range 32, to Brainerd, Crow Wing, and St. Cloud, respectively.

A. To Brainerd, about 48 miles; to Crow Wing, about 56 miles, and to St. Cloud, about 106 miles. These distances are estimated roughly by direct lines between these points.

Q. The witness will please mark in red ink Fisher's Landing on Exhibit "6."

A. (Witness marks the point which he supposes to be Fisher's Landing on Red Lake river with his initials in red ink; he also marks upon said exhibit a red line connecting Fisher's Landing with the point where defendant's road crosses Red Lake river.) This red line is the line of the railroad referred to in my direct examination yesterday. The line of defendant's road from beginning at point 5 miles beyond Crookston for a distance of 10 miles as you go

north is without ties or iron, the same having been taken up and removed.

Q. As you go north from this ten-mile gap how much iron is laid?

A. About 13 miles; that is the limit of original construction; I am not clear on this distance.

Q. Is that terminus upon the Red River?

A. No, sir.

Q. Does it connect with any line of land or water travel?

A. No, sir.

Q. Does it not terminate, as it were, in a wilderness?

A. It terminates in an uninhabited prairie, with no human habitation in sight.

Q. Is there any settlement on that line as located?

611 A. I don't know; I have never been over it; I don't think there is, however.

Q. Is the Red Lake river navigable?

A. It is as high as Crookston in good stages of water, and as high as Fisher's Landing in ordinary stages.

Q. What lines of transportation are on that river?

A. The Red River Transportation Company, known as Kittson's Line.

Q. Is not its terminus at Fisher's Landing?

A. In ordinary stages of water it is.

Q. Does not the 12 miles of branch line to which you have referred appear to have been constructed from Fisher's Landing to the main line of defendant's road near Crookston, to accommodate this Red River business?

A. Unquestionably it does.

Q. Is it not in fact used for that purpose?

A. It is.

Q. Is not this river business transported over defendant's line from Crookston south to Glyndon, connecting there with plaintiff's road?

A. It is.

Q. The road, then, has ties and iron all the way between those points, Crookston and Glyndon, has it not?

A. Yes, sir.

Q. What kind of iron is that?

A. It appears good—about 56 pounds to the yard—of good weight and quality.

Q. Is not this road ironed and tied for a distance south of Glyndon in the same way, and how far?

A. It is for about 12 miles.

Q. What is the distance from Glyndon to Crookston?

612 A. About 63 miles.

Q. Is there any line of travel or business that is a feeder to that road north of Glyndon except the Red River Transportation Line; I have reference now to lines of travel?

A. Nothing except the public highway on to Pembina and Fort Garry.

Q. Where does that intersect this road?

A. It does not intersect it at all; it runs along parallel to it about 12 miles distant, on an average.

Q. That follows the line of the river, does it not?

A. Yes, sir; the winter road does. The summer road runs east of it on the high land.

Q. As to the local travel and traffic on the line of defendant's road north of Glyndon, is it not light, in fact almost nothing?

A. The traffic has been heretofore very light, but has greatly improved within the last year.

Q. Are there any towns other than named upon defendants' road north of Glyndon?

A. None.

Q. Are there any towns on defendants' road on the 12 miles of ironed road north of Glyndon?

A. None.

Q. From Melrose to St. Cloud what is — condition of defendants' road?

A. I have never examined it.

Q. Is not the one baggage car and the one passenger car to which you referred yesterday sufficient to do the business on that line?

A. I think that this one baggage car and one passenger car
613 is not only sufficient to do the business for the present time, but for all time until the road is finished and put in a condition to be operated all the year round, winter and summer, so as to permit the country to be settled up and supplied with fuel, medicines, and the necessaries of life.

Q. Can you swear that this road has not transacted all the business that has been offered to it by its patrons up to this time?

A. I cannot say anything about it. I cannot say it has not.

THOS. S. ROSSER.

Examination continued until Friday morning, Sept. 14, at 10 a. m.

FRIDAY MORNING, *September* 14, 1877.

The said parties appeared by their said solicitors.

WILLIAM CROOKS, a witness produced on the part of the plaintiff, being first duly sworn, deposes and says:

Q. Where do you reside and what is your profession or occupation?

A. I reside in St. Paul; am a civil engineer by profession.

Q. State whether you were in the employ of the St. Paul & Pacific R. R. Co. at any time between the years 1865 and 1870; and, if yea, during what years and portions of years.

A. I was not.

Q. Have you been in the employ of that company since that time?

A. I was acting as sub-contractor in the construction of that road,

and in that capacity was engaged from October, 1871, to October, 1872, about.

Q. On what portion of the line were you engaged?

614 A. Between St. Cloud and St. Vincent and between Sauk Rapids and Brainerd.

Q. Give a detailed statement of the extent to which the work of construction of that portion of the road has been carried and the date, as near as you can recollect, when the construction ceased.

A. The road, by which I mean the track, was, at the time the work of construction ceased, completed for a distance of thirty-five miles, more or less, from St. Cloud, or rather from East St. Cloud, northwestwardly, and from a point twelve miles south of Glyndon Junction to a point ninety-two miles north of Glyndon Junction, and from Brainerd, in a southwesterly direction, four and one-half miles, more or less. The date of the suspension of work upon these lines of road was about October 5, 1872. In addition, grading was done continuously from a point above described, south of Brainerd, for fifty-two miles, piles driven, ties furnished, bridges furnished, all ready to have laid the iron, had there been any to lay, and on the line between St. Cloud and St. Vincent the grading was completed as between St. Cloud and Glyndon, with the exception of 600,000 cubic yards, and between Glyndon and St. Vincent, with the exception of 80,000 yards, and the ties, bridges, piles, for the whole line between St. Cloud and St. Vincent were made and within reach of construction trains either on the Northern Pacific or upon the lines above described of the St. Paul & Pacific Company.

Q. On that portion of these lines upon which iron had not been laid how many miles of road-bed was completed ready for the track, how many miles partially graded, and how many miles were there upon which no grading had been done? State approximately, as near as you can.

615 A. On the Brainerd line there were fifty-two miles graded ready for the superstructure, four and one-half miles upon which nothing was done; on the line between St. Cloud and the Glyndon Junction there are sixty-eight miles upon which the grading was completed, fifty miles upon which nothing was done, and upon the line between Glyndon Junction and St. Vincent fifty miles were graded and fourteen miles upon which nothing was done.

Q. About what time was the road of the St. Paul & Pacific R. R. Co. constructed at and in the vicinity of Glyndon Junction? State as near as you can when construction commenced and when it was completed.

A. We commenced the construction at Glyndon Junction about the middle of May, 1872—from the middle to the end of May—and prosecuted it continuously up to the 5th of October, 1872.

Q. State if the Northern Pacific R. R. was constructed and operated to and west of that point at that time.

A. It was.

Cross-examination:

Q. When did you first commence the work of construction on the lines of these roads?

A. In the fall of 1871, about October.

Q. Your firm did the entire work which was done on these lines prior to the appointment of Farley, receiver, did it not?

A. Yes, sir.

Q. With whom did you contract to do this work?

A. Wm. G. Moorhead.

Q. You mean Wm. G. Moorhead connected with the Northern Pacific R. R. at that time?

616 A. He was.

Q. Did not he claim to be doing this work as construction agent of the Northern Pacific R. R. Co. at this time?

Objected to by plaintiff's counsel as immaterial and not cross-examination.

A. Not that I know of.

Q. Were not his contracts with you signed Wm. G. Moorhead, construction agent?

Same objection.

A. I think two of them were. I know two of them were. I think the two relating to the St. Vincent line.

Q. What position did said Moorhead then hold in the N. P. R. R. Co.?

Same objection, and incompetent.

A. He was a director.

Q. Did not the Northern Pacific Co. then hold and own the stock of the St. Paul & Pacific R. R. Co.?

Same objection, and that it is incompetent—as not the best evidence.

A. I know it by information. That information was derived from general report. I believed it then and do now. I had no personal knowledge of the matter.

Q. Why was the work suspended?

A. Because we declined to work without pay. Moorhead failed to provide the means to meet the estimates according to his engagements.

Q. Were your contracts to finish all the lines of road?

A. They were. We were to complete the road, Moorhead to furnish the iron, and we had nothing to do with the buildings.

Q. Within what time were you to have the work all completed?

616½ A. On or before the 3d of March, 1873.

Q. Had Moorhead complied on his part with these construction contracts would you have completed the construction by that date?

A. If Mr. Moorhead had complied strictly with his part of these several contracts the work of completing the lines of road covered by these contracts, so far as De Graff & Co. were concerned, the en-

tire extension lines would have been completed before the day fixed in the contracts.

Redirect:

Q. Has the St. Paul & Pacific Railroad Company done anything towards the completion of the construction of those lines of road since the suspension of work in October, 1872?

A. So far as I know, the work has been abandoned, the materials sold and destroyed.

Recross-examination:

Q. Does not your answer to the last question refer to the portions of the road not ironed?

A. It did. I mean to say there has not been one inch of iron added to the road since we suspended work.

Q. Was not Jesse P. Farley appointed receiver of this road in August or September, 1873, by this court?

A. He was.

Q. And is he not still such receiver and in possession of these lines in that capacity?

A. He is.

WM. CROOKS.

616¾ CHARLES A. F. MORRIS, a witness produced on the part of the plaintiff, being first duly sworn, deposes and says:

Q. Where do you reside and what is your occupation or profession?

A. I reside in St. Paul; am a civil engineer by profession.

Q. State whether you have ever been in the employment of the St. Paul & Pacific Railroad Co.; and, if so, in what capacity and when.

A. I have been employed as chief engineer from 1870 by appointment made by the president, which has never been rescinded to the present time, but draw no salary from it.

Q. State whether you have ever surveyed any line or lines of railroad for said company as one of their employees or officers or as the employee or officer of any other company; if yea, what lines or line; where was such survey or surveys made.

A. I made several surveys for the St. Vincent lines to determine the permanent location of the lines from St. Cloud to St. Vincent and Sauk Rapids to Brainerd during the years 1870, 1871, and 1872.

Q. State whether you surveyed the lines upon which the construction of said roads was commenced and partially completed.

A. I did all except a portion of the Brainerd line, which was temporarily taken out of my hands during the permanent location by the chief engineer of the Northern Pacific R. R. Co., but it returned back into my charge in the spring of 1872.

617 Q. Witness is asked to examine Exhibit No. "6" and to state whether that is the map or plat of a survey made by him of that portion of the St. Paul and Pacific R. R. line known as the St. Vincent Extension.

A. It is.

Q. State whether that map indicates the line of definite location of the road.

A. Not entirely; there were some few changes made during construction, which are not shown on the map.

Q. What is the largest limit in rods or miles of changes made from this line to the line as constructed?

A. Four miles and a half.

Q. What is the distance from the point where the road as constructed, or as it is to be constructed, diverges from the line as surveyed to the point where it again intersects the line as surveyed, as appears by Exhibit 6 in the section including Fergus Falls district?

A. My recollection is that it is about 14 miles, but as it appears on a map here it is about 33 miles.

Q. State if the line, as the same is to be constructed, is to pass by Osakis Lake.

A. It is.

Q. How far is that in a direct line from the line as surveyed and platted in Exhibit "6?"

A. About five miles.

Q. State whether such variations in the line constructed or to be constructed from the line as surveyed and platted in Exhibit "6" were of frequent occurrence along the whole line.

A. Such changes and variations took place over a considerable portion of the line, necessarily caused by having to put in the curvature to connect tangents or straight lines, which were not
618 originally staked on the location survey; also in a few instances changes were made by local petition of the inhabitants, such as at Osakis, St. Joe, Melrose, and other places.

Q. In making the survey of 1871, indicated by Exhibit "6," what was done on the ground?

A. The ground was examined carefully and a line of road selected and marked thereon by stakes driven in the ground at average distances of 100 feet; change of courses marked by large hubs. All natural features, such as rivers and elevations, noted.

Q. State whether the line of road run by you in 1871, as indicated on Exhibit "6," intersects the original line run in 1869, indicated by Exhibit "7," where it comes between Otter Tail and Rush Lake.

Objected to as immaterial.

A. It does not.

Q. How far from that point is the line of 1871 at its nearest point?

Objected to as immaterial.

A. Twenty-seven and one-half miles southwest.

Q. State whether, in running the line of 1871, you were governed by the provisions of the act of Congress of March 3, 1871, and by the act of the Legislature of the State of Minnesota in reference to the location of that line or by the directions of the officers of the St. Paul & Pacific R. R. Co.?

Objected to as incompetent, irrelevant, and immaterial.

A. I was governed entirely by directions received from the Northern Pacific R. R. Co. and also those of the president of the First Division of the St. Paul & Pacific R. R. Co.

619 Q. State whether these instructions from the directors of the Northern Pacific R. R. Co. were given in writing or verbally by individual directors.

A. Once at a meeting of the directors of the Northern Pacific R. R. Co. I received directions, and on several occasions afterwards received written instructions from Mr. Moorhead in reference to location matters.

Q. State whether the line ran by you in 1871 intersects the line of 1869 at any point; I mean the line of 1871 as shown on Exhibit "6."

A. It does not. The line as shown on Exhibit "6" does not intersect the line as shown on Exhibit "7."

Q. Did you survey any other line in 1871 for the St. Paul and Pacific R. R. Co. than that shown on Exhibit "6?"

A. There was a line run in 1871 between Glyndon and St. Vincent distinct from and in a different location from that shown in Exhibit "6."

Q. Please state approximately when that was run, with reference to the line indicated on Exhibit "6."

A. The line commenced at East St. Cloud and ran northwesterly via Sauk Centre, Alexandria, Otter Tail City, Rush Lake, and thence northwesterly to St. Vincent.

Q. State if that survey was platted and returned by the engineers to the offices of the defendant corporation.

A. It was.

Q. State if this line was approved by the board of directors.

A. It was not approved as the permanent location.

Q. State when the survey was made of the line of road as the same is constructed in part and as to be constructed.

620 A. During the spring and summer of 1871, as appears by Exhibit "6," the changes from this line were made during the progress of construction in 1872.

Q. How much of these lines of road have been operated since Oct., 1872?

A. On the Brainerd line, none; on the St. Vincent, thirty-five miles from St. Cloud to Melrose, continuously; 12 miles south of Glyndon, partially; and from Glyndon to Crookston, nearly continuously.

Q. State whether any, and, if any, what, work of construction on these lines has been done since Oct., 1872, by the St. Paul and Pacific R. R. Co.

A. On the Brainerd line, none; on the St. Vincent line, there was considerable work done on the line from St. Cloud to Melrose in ballasting and putting sidings down at Melrose and putting the line in condition to be operated, which line was not in condition for service when De Graff & Co. suspended work. There was also work done on the line from Glyndon to Crookston by Receiver Far-

ley, consisting principally of several miles of surface ballast, in building section-houses, and putting in some additional open culverts.

Q. State whether anything, and, if anything, what, was done towards the construction of these lines of road by the St. Paul & Pacific R. R. Co. prior to 1869.

A. Nothing that I am aware of.

Q. State, if you can, how far east of Glyndon the surveyed line of 1869 intersected the line of definite location of the Northern Pacific Railroad Company as afterwards established.

A. My impression is that it intersected the Northern Pacific line about 36 miles eastwardly and leaves the located line of the N. P. R. R. about 50 miles eastwardly.

621 Cross-examination:

Q. What is the distance of St. Paul & Pacific line of road, as definitely located upon Exhibit 6, from Otter Tail Lake at its nearest point?

A. 15¾ miles in a direct line.

Q. Is it not true, then, that the line of definite location of this line of road runs within 15¾ miles of Otter Tail Lake?

A. It is.

Q. And the line of road as being constructed runs within that distance?

A. Yes; it does.

Q. State what experience you have had in the matter of railroad engineering, Mr. Morris.

A. I have performed professional service on a great number of railroads, both in Europe and America; I spent 5½ years on the Hudson River railroad, Albany & Troy 1 year, Chicago, Alton & St. Louis several years, and until completed. In Minnesota I have been connected with the railroad system since it started; I assisted in the location of the lines of the First Division of the St. Paul & Pacific Railroad Co. from St. Paul to Breckenridge, St. Paul to St. Cloud, as far as the office work was concerned, and located in the field the Winona Branch. These Minnesota roads are all land-grant roads.

Q. State whether or not on each of these land-grant roads with which you were connected, and on all other land-grant roads, as far as you know, a line of definite location does not precede the work of construction.

A. It does.

Q. And those lines are filed with the Governor, as in this case?

A. Always.

622 Q. State whether, in the actual construction, it is not necessary to depart, more or less, from this line, and fully explain the matter.

A. It is most always necessary to make changes from the original location, within reasonable limits, frequently called for by the curvature not being staked out on the original record maps, and by changes necessary to be made by bad marshes and lakes through

which the original location ran, and which, on a close examination of the ground preparatory to construction, admitted of improvements being made. Such changes, as far as I am aware of, were permitted and approved by the Government when within reasonable limits.

Q. Were any of the changes to which you have referred in your examination-in-chief, along the line of this road, beyond these reasonable limits which you refer to?

Objected to by plaintiff's solicitor as incompetent, as asking for the opinion of the witness upon a matter concerning which he is not an expert.

A. Not that I am aware of.

Q. Were these changes made known to the State authorities at the time.

A. I don't know, sir; it was not my business to do so, and I don't know what course the officers of the road pursued in regard to it.

Q. Were any complaints ever made by any one in regard to these changes, except by parties along the line?

A. None that I know of, except those arising from the different local interests.

Q. Were not these changes made with a view to subserve, as far as possible, consistent with the engineering difficulties, the local interests?

623 A. They were.

Q. You spoke about receiving instructions as to the location of your definite line from the board of directors of The N. P. R. R. Co., the plaintiff here, and also from Mr. Moorhead. In what capacity was Mr. Moorhead acting in giving these directions?

A. He signed his letters to me, Mr. Wm. G. Moorhead, construction agent. I had the contracts also in my possession. They were signed in the same way. (I mean copies of the contracts.)

Q. Was not Mr. Moorhead then a director in the N. P. R. R. Co.?

Objected to as incompetent.

A. I have always understood he was. I have no personal knowledge of it, more than hearsay.

Q. Did you not understand that Mr. Moorhead, in giving you these instructions, assumed to act in the interest of the N. P. Co.?

Same objection as above.

A. I can't answer that question. I don't know.

Q. Did you not understand at the time of the location of this road that the line thereof was controlled by the N. P. R. R. Co.?

Objected to as immaterial.

A. I did so understand it, and for good reasons.

Q. State what those reasons are.

A. That I, as constructing engineer, was frequently called upon to consult and take advice from the engineer of the N. P. road, as, for instance, the form and method of constructing St. Cloud bridge, the

general location of the line from St. Cloud to Glyndon, and
624 the Brainerd Branch, and sending monthly statements to New York showing the progress of the work, the number of engineering staff employed, and such other information as I was ca[illegible] for.

Q. Was it not generally understood at this time that the Northern Pacific Co., in fact, at that time owned the capital stock of both the St. Paul and P. R. R. Co. and of the First Div. of the St. Paul and Pacific R. R. Co., of which Mr. Becker was president; and did not said Northern Pacific Co. at that time, or shortly afterwards, assume the control and operate the lines of the First Div. Co.?

Objected to as immaterial.

A. I so understood it, and as regards their taking hold of and operating the lines of the First Div. Co. they (the N. P. Co.) sent out a superintendent from Philadelphia to assume control of the operating department of the road, and they also appointed a superintendent of machinery, who, as far as possible, changed and marked all the rolling stock of the First Div. Co. with the name and brand of the Northern Pacific Co. All new castings on the rolling stock and frogs and switches were branded N. P. R. R., many of which are on the road still.

Q. You have in your direct examination given us the distance between the so-called Shepherd line as it runs between Otter Tail and Rush Lakes and the line of the definite location of the St. P. & Pacific R. R. You will now please give the distance between the Shepherd line, so called, at its northwestern terminus, as it appears on Ex. "7," and the line of said St. Paul and Pacific R. R..

A. Twenty-five and one-half miles on a due east and west line.

625 Q. Did not you remain in charge of said extension line, as engineer-in-chief, in behalf of the R. R. Co. or Mr. Farley, its receiver, from the time of the first construction of those lines up to the present time, and are you not in charge under Receiver Farley?

A. I did all except an interval on the Brainerd Branch of three or four months during the fall of 1871 and the fore part of 1872; I am still in charge under Receiver Farley.

Q. Have not some portions of those lines been constructed in a good and substantial manner and as a first-class railroad to the acceptance of the proper State authorities; and, if so, what part, and when was it so constructed? I have reference to the so-called extension lines.

A. There have been portions so constructed, namely: On the St. Vincent Branch, from East St. Cloud to the town of Melrose, and from a point twelve miles south of Glyndon, at a point now called Barnes, extending to Glyndon, and thence northward ninety-two miles to a point close to Snake Hill river—a point ninety-two miles north from Glyndon.

On the Brainerd Branch there was four and one-half miles constructed, running southerly from the town of Brainerd. All those

several portions of line were laid with 56-pound fish-bar iron and good ties, and are now being operated, except that portion north of Crookston. These several portions were all fully constructed in the year 1872, except for some ballast placed on the road by the receiver in 1873.

Q. State whether or not there has not always been sufficient equipment on these roads to do the business required.

626 A. I don't know; I have no personal knowledge about it, only so far as the line operated between St. Cloud and Melrose, which is sufficiently equipped and stocked for all the business offering itself.

Q. Are you acquainted with the country from Glyndon north along the line of this road?

A. I am.

Q. Does it connect at its northern end where now constructed with any lines of travel whatever?

A. It does not.

Q. Is not this northern terminus an uninhabited prairie, with not a human habitation in sight?

A. It was so when I last saw it; thoroughly so.

Q. Is there any local business tributary to this road along the line north of Glyndon which could not probably be all done with one baggage car and one passenger coach?

A. Little, if any, local traffic, and would consider the trains now run sufficient to do the business, so far as local traffic is concerned.

Q. You are familiar with the Red River?

A. I am for a portion of the way.

Q. Is there a line of transportation on that river?

A. I believe there is. I state positively there is.

Q. What line is that?

A. The Red River Transportation Company, known as Kittson's Line.

Q. State whether or not that line is tributary to this road; and, if so, how it connects with it.

627 A. It is; by reason of the poor navigation of Red River between Grand Forks and Moorhead it was decided by the steamboat company to avail themselves of the large body of water in the Red Lake river to run to a point on said river about ten miles south of Crookston, thereby obtaining good navigation between Fisher's Landing and Winnipeg. The receiver of the St. Paul & Pacific lines, in order to avail himself of that trade, built a spur track some ten miles in length from Crookston to Fisher's Landing.

Q. Is not that business from the steamboat line practically the only business tributary to so much of this road as extends north from Glyndon, and will it not continue to be its sole source of business until the country either settles up or the line is extended through to the British settlements?

Objected to as immaterial.

A. That is my opinion.

Q. In your opinion is it any prejudice to anybody to swing the upper end of that track, commencing five miles north of Crookston, down to Fisher's Landing, for the purpose of connecting with this transportation line?

Objected to as immaterial and incompetent.

A. I don't consider any person or persons injured or inconvenienced by it, as that portion of Polk county is not settled.

Q. Whereabouts would a line drawn due west from the point of intersection of the 10th standard parallel with the 4th guide meridian intersect the line of said St. Vincent Extension as now constructed?

Objected to as immaterial and for the reason that the grant of lands to the plaintiff corporation was prior in point of time to the grant to the defendant corporation at all points west of the 4th guide meridian.

A. About 8 miles north of Glyndon.

628 Redirect:

Q. State how far east of the point of intersection with the Northern Pacific R. R., as constructed on the line of survey indicated by Exhibit 7, is the point of intersection of the 10th standard parallel with the 4th guide meridian?

Objected to as immaterial.

A. About 52 miles, where it first strikes the Northern Pacific R. R., and where it leaves the same is about 55 and ¾ miles.

Adjourned until 10 o'clock Saturday morning, Sept. 15, 1877.

SATURDAY MORNING, *Sept.* 15.

The said parties appeared by their said solicitors, and the recross-examination of witness CHAS. A. F. MORRIS is resumed:

Q. Look at Exhibit 6 and state whether that is not the map of definite location of the St. Vincent Extension.

A. It is.

Q. What are the squares marked by black lines on this map?

A. The heavy black lines denote township boundaries and the fine black lines denote the boundaries of sections, which are one mile square, and the figures placed thereon signify the number of the section.

Q. What do the flag stations marked with red ink and intersecting the line of road indicate? I refer to Exhibit 6.

A. They indicate the definite location as staked on the ground on the day, month, and year written on map, Exhibit 6.

629 Q. What do the dates marked on the map between the respective flag stations indicate?

A. They indicate the precise time when the definite location was made between those flags shown on the map.

Q. Are those dates correct as put down upon the map?

A. I have no doubt they are.

Redirect:

Q. By saying that the line of road indicated on Exhibit 6 is the line of definite location, you do not mean to say that it is the precise line upon which the road has been or is to be constructed, but that it is the approximate line of route?

A. It is not the precise line as shown on Exhibit 6 in all cases, but the general route between terminal points is the same, only varied by changes necessitated by engineering necessities, as explained in my previous testimony.

Q. In making the survey of a line of railroad for construction what is done by the engineers upon the ground?

A. They go on the ground and examine the location previously made and see if improvements can be made in any portion of the line between certain points about to be constructed; if the reconnoissance of the line would show that improvements can be made experimental lines are run and staked on the ground, distances and levels taken with which to make comparisons with the original survey of definite location. If those new surveys show improvements can be made a new line designed for construction is laid out, staked, and prepared for grading and a new location tied up to the U. S. Government land surveys, showing the route and change of
630 location, if any, from the original definite location. Stakes are driven at an average distance, on a straight line, of 100 feet apart and by large hubs at the tangent points where curves leave, which tangent hubs are usually tied up by witness stakes, so as to be replaced in case of being knocked out or destroyed. Curves are usually staked out at intervals of 50 feet. Afterwards, to prepare the work and make it plain to the contractors or laborers, grade stakes are placed at and opposite the stakes heretofore driven, marked with the height of cut or fill plainly; also stakes placed at the base or bottom of the slope on fills and on cuts where the slope commences.

Recross-examination:

Q. Have you not been just describing what is known in railroad engineering as the construction survey, as distinguished from the survey of definite location of the line?

A. Yes.

Q. Now describe the survey of definite location of the line as contradistinguished from the construction survey.

A. The country lying between the points designed to be connected with a line of railroad is first carefully examined by the engineer placed in charge of such survey. He takes notes of leading points that he designs to run by in the general direction of the proposed line, taking care to avoid all natural obstructions that would necessitate large cost and trouble to the company proposing to build the line. He then commences with his party to run out by course and distance and stake on the ground a proposed line, carefully noting all changes of courses and taking the levels of line as he pro-
631 ceeds, in order to enable him to judge of the feasibility of the line he has previously staked out. If the line is satisfac-

tory he takes field-notes showing the general topography of the country adjoining and ties up or connects his line with the U. S. Government surveys, if they exist in the locality, so as to enable him to make an accurate map showing his location and the natural features of the country through which the route runs, his stakes being placed at intervals of 100 feet.

Q. Such line becomes a line upon the ground, does it not?

A. It does.

Q. Was not the line of definite location marked upon Exhibit "6" established in the manner you have just described?

A. It was.

Q. Witness is shown Exhibit "2" and is asked to examine the continuous red line marked on said map, "Amended line Northern Pacific railroad," and asked to state if he is familiar with the general features of the country through which that line runs.

A. I have passed over that portion of it between Duluth and Georgetown, on the Red River of the North, several times.

Q. Describe the general features of the country with reference to engineering difficulties in the way of railroads.

A. The line coming westward from Duluth passes through a very rough country, composed of lofty hills, mostly of granite and trap rock, and intersected in various places by deep ravines and marshes; thence it passes out into a level country composed of nearly continuous marsh to where it strikes the Mississippi river; thence
632 through an alternately rough and marshy country interspersed with lakes and sink-holes—mud-holes. From Brainerd westward to the Otter Tail country the land is broken and rolling, partly covered with timber and partly prairie, interspersed with numerous lakes and marshes, so frequently met with that the distance between them appears very short indeed; thence to Georgetown the line passes over a prairie country interspersed with numerous lakes and marshes, the whole line presenting a difficult country to select a line that could be built with any degree of economy. From the numerous natural obstacles presenting themselves it would and did take a long time for the locating engineers to select a line that would be adapted for construction. When construction was going on it was found necessary to make certain local changes in the line caused by unfathomable sink-holes and marshes, but which, by superior engineering skill, were successfully surmounted.

Q. Would it be possible for any corps of engineers to make a line of definite location of a railroad upon the line to which your attention has been called on Exhibit "2?"

A. It would be possible, but highly absurd and injudicious to waste time and money in staking out a line in direct course, as shown on Exhibit "2," between Duluth and the west line of town. 135, R. 39.

Q. In round numbers, what per cent. would be the increased cost of such a line over that of a line such as would ordinarily be selected by competent engineers?

A. I could not say, nor do I believe any engineer could tell, except by giving a wild guess at it, but I could say the expense would

be very largely in excess of a line properly explored, probably from 50 to 100 per cent. more, so far as the road-bed is concerned.

632½ Q. State whether any line that might be located by any engineer of competence through that country would not have about the same curvatures in the general course as the one actually located there and constructed by the plaintiff company.

A. I think so. I think the engineers who made that location were good and capable men, who devoted themselves for a long period and at a great expense in selecting the line they did.

Redirect examination:

Q. In the parlance of engineers is there any difference in the expressions "line of definite location" and "line of general route?"

A. There is.

Q. What is it?

A. The line of general route signifies and shows a line of experiment between the terminal points sought to be connected, showing the general features of the country, so as to enable the parties interested in building the line to ascertain where to place the line for definite location.

Q. Is there any distinction between "the line of definite location" and "the line upon which the road is actually built or to be built?"

A. There is, particularly in regard to land-grant roads, as a definite location is a record required to be filed, showing the line of proposed road to be constructed. Construction location is a modification or elaboration of the definite location, placed on the ground on the line of definite location when practicable, or contiguous thereto, with all the detail of curvature, grade stakes, side stakes, and slope stakes placed in their proper position for the guidance of parties about to commence construction.

632¾ Q. What is done on the ground in making a survey of a line of general route?

Objected to, unless the answer is limited to what was done by the plaintiff company in fixing its general route, as immaterial.

A. The country is examined carefully; all the leading characteristics carefully noted down. When instrumental lines are projected from the proposed starting point, wherever that may be, the courses are straight lines extending as far as possible in the direction it is proposed to go; the line marked on the ground by stakes driven to show where the lines run; levels taken to show the grade or any difficulties that may be encountered. After this is done a rough map or profile is made on the ground from the notes thus obtained, which enables the engineer in charge to select or reject the line or lines run, all this previous work being done to enable the engineer to arrive at a definite conclusion where the permanent line should be placed, and such line always precedes the line of definite location.

CHAS. A. F. MORRIS.

Plaintiff offers in evidence five schedules of the descriptions of lands, subject to selection by the Northern Pacific Railroad Company, in the five respective U. S. land districts in Minnesota, in which the grant of lands by the United States to the plaintiff took effect, the same including all the lands in Minnesota now subject to selection by said company, each schedule being duly certified by the register or register and receiver of the proper land district. This evidence is offered for the sole purpose of showing or as tending to
633 show that if the plaintiff should receive all the lands subject to the said grant in the indemnity limits in Minnesota there would still be a deficiency in the amount of lands designed and intended to be granted by Congress in the act referred to.

Objected to as immaterial.

The said five schedules are marked respectively as follows:
The Fergus Falls land-office schedule, Exhibit 10.
The St. Cloud land-office schedule, Exhibit 11.
The Detroit land-office schedule, Exhibit 12.
The Duluth land-office schedule, Exhibit 13.
The Taylor's Falls land-office schedule, Exhibit 14.
All of which are herewith returned.

M. L. KNOWLTON, a witness produced on the part of the plaintiff, being first duly sworn, says:

Q. Where do you reside and what is your occupation?
A. I reside in Minneapolis; am employed in the land department of the Northern Pacific R. R. Co.; also act as clerk for the general counsel of plaintiffs. My principal duty in that respect is keeping record of the title of the company's lands.
Q. State whether the lands mentioned in the bill in this case and described in the schedule thereto attached are within the 40-mile limits of the line of plaintiff's road as constructed.
A. They are.
Q. State whether they are free from pre-emptions or other rights or claims other than that of the defendant corporation herein in this action.
A. They are or were at the time I made the abstract of
634 them in 1872. Of course, I cannot say but the land officers have allowed some pre-emption filings since.
Q. State if all these lands are within the State of Minnesota.
A. They are.
Q. How many acres of land does it require to fill the complement of Government lands granted by Congress to plaintiff in Minnesota?
A. 2,918,400 acres.
Q. What number of acres in Minnesota have been patented to the company?
A. $737{,}046\frac{71}{100}$ acres.
Q. What number of acres in Minnesota are still subject to selection by the plaintiff under the terms of the said grant?
A. $1{,}410{,}665\frac{94}{100}$ acres. I cannot state this from my own knowl-

edge, but from the certificates of the U. S. land officers in the respective districts to which the land grant extends. That includes all lands within the 40-mile limits of the N. P. R. R. claimed by the defendant corporation.

Q. What is the number of acres deficiency, in Minnesota, from the full complement of the grant?

A. After allowing 84,332 $\frac{17}{100}$ acres, which have been certified to the company, but not yet patented, there is a deficiency of 686,355 $\frac{18}{100}$ acres, which cannot be filled within the 40-mile limits, besides a claim of the State of Minnesota of 187,876 $\frac{98}{100}$ acres, which they claim as swamp lands, which, if allowed, will increase the deficiency to 874,232 $\frac{16}{100}$ acres.

Q. Can you furnish a description of the lands in the schedule attached to the bill of complaint, lying outside of the 40-mile limit from the line of general route?

634½ A. I can, but cannot do it without going to the office.

(It is stipulated that witness may furnish such description, and that it be attached as Exhibit "15.")

Q. Did you prepare the schedules annexed to the bill of complaint in this suit?

A. I did.

Q. What lands are they?

A. They are all the lands in odd-numbered sections within the limits of the grant to the Northern Pacific R. R. Co., which come within the limits also of the St. Vincent Extension, which are free from pre-emption, homestead, or other claims.

Q. From what data did you make your compilation or schedule?

A. From abstracts which I made from the records in the United States land offices.

Q. Define the boundaries, in a general way, of the lands in controversy.

A. They lie principally south and west of a line commencing in or near township 128, range 32, and extending in a northwesterly direction, on a line nearly parallel with the St. Vincent Extension and twenty miles east therefrom, extending to the north boundary of the 40-mile limit of plaintiff's grant in township 146.

Q. Are you certain that all the lands embraced in the schedule annexed to the bill are within the plaintiff's 40-mile limits, and as the same are fixed by the U. S. land office, and that no tract thereof is outside of said limits?

A. Not absolutely certain, but I am very positive they are. They all are, unless a mistake or clerical error has been made, which is not very probable, as I prepared the schedule with care.

634¾ Q. In the preparation of these schedules how did you determine the boundaries of the limits of the respective grants?

A. From maps, which were copies of those on file in the United States Land Office, upon which these boundaries are marked. I personally prepared these schedules myself.

M. L. KNOWLTON.

J. B. POWER, a witness produced on the part of the plaintiff, being first duly sworn, says:

Q. Where do you reside and what is your occupation?

A. I reside in St. Paul; am general land agent for the Northern Pacific R. R. Co.

Q. Witness is asked to examine Exhibit "7" and state how far east is the point of intersection of the 10th standard parallel with the 4th guide meridian from the point where the line of road, as indicated on said Exhibit "7," intersects the line of general route of the N. P. R. R., and how far is the intersection of said parallel and meridian east of the actual crossing at Glyndon.

Objected to as immaterial.

A. From the point of intersection of the line of general route with the survey of 1869, as shown by Exhibit "7," at and near the eastern shore of Detroit Lake, the intersection of the fourth guide meridian and the 10th standard parallel is 54 miles east and 11 miles north, or in a direct line some 55 miles. From Glyndon this point of intersection of the 10th standard parallel with the 4th guide meridian is, in a direct line, some 92 miles.

635 Cross-examination:

Q. What is the distance from this point of intersection of the 10th standard parallel with the 4th guide meridian to Brainerd, Crow Wing, and St. Cloud, respectively?

A. To Brainerd, about 48 miles; to Crow Wing, about 50 miles; and to St. Cloud, about 100. These distances are by direct lines.

JAMES B. POWER.

The plaintiff offers in evidence the following acts and parts of acts of the Legislature of the Territory and State of Minnesota, namely:

Act of May 22, 1857, sections 1, 2, 12, 16, and 17.

Extra Session Laws of 1857, pages 4, 8, 11, and 12.

Act of May 10, 1862, sections 1, 2, 3, 5, and 6.

Special Laws of 1862, pages 247, 248, 249, and 251.

Act of March 6, 1863, Special Laws of 1863, pages 147, 148, and 149.

Act of February 6, 1864, sections 6, 7, and 8, Special Laws of 1864, pages 176 and 177.

Act of March 4, 1864, Special Laws 1864, pages 177, 178.

Act of March 2, 1865, first clause of section 1, Special Laws of 1865, page 40.

Act of March 2, 1867, sections 2 and 3, Special Laws of 1867, page 2.

Act of March 6, 1869, section 1, Special Laws 1869, page 246.

Act of March 3, 1870, Special Laws 1870, page 332.

Act of March 7, 1870, Special Laws 1870, pages 334 and 335.

Act of March 11, 1873, Special Laws of 1873, pages 297, 298.

636 Examination adjourned until Monday morning, Sept. 17, 1877, at 10 o'clock.

MONDAY MORNING, *Sept.* 17, 1877.

The parties aforesaid appeared by their said solicitors.

Plaintiff offers in evidence lithographic copy of Jewett's new sectional map of Minnesota, upon which is indicated by green coloring the lands in controversy in this action, which is marked Exhibit "16" and herewith returned.

Witness M. L. KNOWLTON recalled, and being further examined in chief, further testifying, says:

Q. State who did the coloring upon Exhibit "16."

A. Witness examines Exhibit "16" and says: I did it.

Q. What does the yellow coloring, the green, and the blue indicate, respectively?

A. The yellow indicates lands belonging to the defendant corporation, the southerly line thereof being the southerly line of its limits, which are outside of the limits of the plaintiff corporation's land grant, the northerly line of said yellow tract being the southerly line of plaintiff's 40-mile limits; the green designates the lands in controversy, the northeasterly boundary thereof being the northeasterly line of the defendant R. R. Co.'s 20-mile limit, the southwesterly line thereof being the southwesterly boundary of plaintiff's 40-mile limits; the blue represents lands belonging to the plaintiff which are outside the limits of defendant corporation's land grant; the zigzag dotted red lines represent, respectively, the 20 and 40 mile limit of plaintiff's amended line of general route, as the same appears on Exhibit "2."

M. L. KNOWLTON.

637 Plaintiff offers in evidence sectional map of the surveyed portion of Minnesota and the northwestern part of Wisconsin for the purpose of showing the relative locations of the line of the St. Vincent Branch and the line of Shepherd's survey of 1869, as indicated on Exhibit 7, and the definite line of the Northern Pacific railroad as constructed, which is marked Exhibit 17.

Objected to as immaterial.

Plaintiff offers in evidence a letter from the Secretary of the Interior to the Commissioner of the General Land Office of date March 27, 1874, and a letter from the Commissioner of the General Land Office to the register and receiver of the U. S. land office at Detroit, Minn., of date May 12, 1874, which are attached together and marked Exhibit 18.

Plaintiff offers in evidence a letter of the Commissioner of the General Land Office to the register and receiver of the U. S. land office at Oak Lake of date April 7, 1873, which is marked Exhibit 19 and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence a letter from the Secretary of the Interior to the Commissioner of the General Land Office of date March 22, 1873, which is marked Exhibit 20 and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence a decision and letter of W. A. Smith, assistant attorney general, directed to Hon. C. Delano, Secretary of the Interior, dated March 17, 1873, which is marked Exhibit 21 and herewith returned.

Objected to as immaterial.

638 Plaintiff offers in evidence a letter from the Commissioner of the General Land Office to the register and receiver of U. S. land office at Oak Lake, Minnesota, dated June 24, 1873, which is marked Exhibit 22 and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence a letter from the Commissioner of the General Land Office to the register and receiver of Oak Lake land office, Minnesota, of date July 9, 1873, which is marked Exhibit 23 and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence letter of Commissioner of the General Land Office to register and receiver at Oak Lake, Minnesota, of date November 14, 1873, which is marked Exhibit 24 and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence a letter of the Secretary of the Interior to the Commissioner of General Land Office, of date March 27, 1874, and also letter of Commissioner of General Land Office to the register and receiver of the U. S. land office at Detroit, Minnesota, of date April 4th, 1874, which are attached together as one paper and marked Exhibit 25 and herewith returned.

Plaintiff offers in evidence letter of Commissioner of General Land Office, of date May 21, 1872, to W. A. Newton, Esq., register of U. S. land office at Alexandria, Minn., which is marked Exhibit 26 and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence copy of map showing the lands embraced in the grant to the N. P. R. R. Co. in the Detroit land district, in Minnesota, which is marked Exhibit 27 and herewith returned.

639 Plaintiff offers in evidence letter from the Commissioner of the General Land Office to the register and receiver of the U. S. land office at Alexandria, Minn., of date Dec. 26, 1871, which is marked Exhibit 28 and herewith returned.

Waiving authentication, defendant objects that the same is incompetent, irrelevant, and immaterial.

Plaintiff offers in evidence a map, being a copy of the map transmitted from the General Land Office to the U. S. register and receiver of the Alexandria land office showing the 20, 30, and 40 mile limits of lands granted to the Northern Pacific R. R. Co. within the

Alexandria land district, which is marked Exhibit 29 and herewith returned.

Same objection as last above.

Plaintiff offers in evidence letter of the Commissioner of the General Land Office to the register and receiver of the U. S. land office at Alexandria, of date Dec. 26, 1871, which is marked Exhibit 30 and is herewith returned, being letter transmitting Exhibit 29.

Waiving authentication, objected to as incompetent, irrelevant, and immaterial.

Plaintiff offers in evidence letter of the Commissioner of the General Land Office to register and receiver of U. S. land office at St. Cloud, Minn., of date Dec. 26, 1871, which is marked Exhibit 31 and is herewith returned.

Same objection.

Plaintiff offers in evidence a map showing the 20, 30, and 40 mile land-grant limits of the N. P. R. R. Co. in the St. Cloud land district, in Minnesota, the same being copy of a map transmitted by the General Land Office to the local land office at St. Cloud with Exhibit No. "31;" which map is marked Exhibit No. "32" and herewith returned.

Same objection.

640 Plaintiff offers in evidence certified copy of a letter from Wm. R. Marshall, Governor of Minnesota, to J. A. Cox, Secretary of Interior, of date Nov. 1, 1869, which is marked Exhibit "33" and herewith returned.

Objected to as immaterial.

Plaintiff offers in evidence a certified copy of a letter from the Secretary of the Interior to the Governor of Minnesota, of date Dec. 9, 1869, which is marked Exhibit "34" and herewith returned.

Objected to as immaterial.

Adjourned until Tuesday morning, Sept. 18, 1877, at 10 a. m.

TUESDAY, *Sept.* 18, 1877.

The said parties appeared by their said solicitors, and Geo. Gray, Esq., also appeared as solicitor of plaintiff.

Plaintiff offers in evidence resolution of the board of directors of the St. Paul and Pacific R. R. Co., passed at a meeting of the board of directors held May 28, A. D. 1864, accepting the resolution of Congress of July 12, 1862, and the acts of the Legislature of the State of Minnesota of March 6, 1863, and March 4, 1864, which is marked Exhibit "35" and herewith returned.

Objected to as immaterial.

Plaintiff also offered in evidence resolution of the board of directors of said company, passed at a meeting of said board held Dec.

13, 1871, releasing to the U. S. all lands along abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and accepting the act of Congress of March 3, 1871, which is marked Exhibit "36" and herewith returned.

641 Plaintiff also offers in evidence resolution of the board of directors of said company, passed at a meeting held on the 14th day of November, 1864, authorizing the issue of $2,000,000 special stock upon the branch railroad of the company to Lake Superior, which is marked Exhibit "37" and herewith returned.

Objected to as immaterial.

Plaintiff also offers in evidence resolution of the said board, passed at a meeting held March 14, 1865, accepting the acts of the Legislature of the State of Minnesota of March 2, 1865, and March 4th, 1865, which is marked Exhibit "38," and is herewith returned.

Plaintiff offers in evidence a resolution of said board, passed at a meeting of the same held Oct. 13, 1869, adopting Shepherd's line as surveyed from Crow Wing to the north line of Becker county, which is marked Exhibit 39 and herewith returned.

Objected to as immaterial.

Plaintiff also offers in evidence a resolution of said board, passed at a meeting held March 22, 1871, accepting the provisions of the act of Congress of March 3, 1871, and directing the release of lands as provided in said act, which is marked Exhibit 40 and herewith returned.

Plaintiff offers in evidence a resolution of said board, passed at a meeting held March 22, 1871, directing the commencement of the survey of said roads and location thereof to Brainerd and to the point of intersection with the Northern Pacific railroad at or near Otter Tail and Rush Lakes, which is marked Exhibit 41 and herewith returned.

642 Plaintiff also offers in evidence a resolution, passed at a meeting of said board held March 22, 1871, adopting a line for the construction of said railroad from Crow Wing to Brainerd and from St. Cloud or Sauk Rapids to a junction with the Northern Pacific R. R. at or near Otter Tail and Rush Lakes, which is marked Exhibit 42 and herewith returned.

Plaintiff offers in evidence a resolution of the board of directors of the St. Paul & Pacific R. R. Co., passed at a meeting held Dec. 13, A. D. 1871, adopting the lines of the Morris surveys, as certified by him and the president Nov. 7th and 22d, 1871, which is marked Exhibit 43, and is herewith returned.

Plaintiff also offers certified copy of the resolutions of the board of directors of said company of May 28, 1864 (Exhibit 35), transmitted to the Governor of the State of Minnesota, as directed in said resolution, by the president and secretary of said corporation, with the letter accompanying same, which is marked Exhibit 44 and herewith returned.

Objected to as immaterial.

Direct testimony on part of plaintiff closed.

Exhibits to Plaintiff's Testimony.

EXHIBIT 1.

Map of the Northern Pacific railroad as the same is constructed, with memorandums thereon as to dates of withdrawal and
643 dates thereof of public lands under the provisions of the grant to the plaintiff upon filing plats of general route and maps of definite location, with colored lines indicating the line of definite location and the withdrawals thereunder, and lines indicating the withdrawals on the location of the general route, and lines indicating the limits of the several land districts through which the route passes in Minnesota.

EXHIBIT 2.

Map exhibiting amendment of line of location of general route of Northern Pacific R. R. in Minnesota and memorandum of the receipt of same, Oct. 12, 187 , the dotted red line thereon indicating the original line of general route and the full red line thereon the amended line of general route.

EXHIBIT 3.

A map showing the definite location of the Northern Pacific railroad in Minnesota, certified by the Commissioner of the General Land Office, with the affidavit of D. C. Lindsley, assistant engineer, and certificate of J. Gregory Smith, president, and Samuel Wilkison, secretary, of plaintiff corporation, and memorandum of receipt at General Land Office Nov. 21, 1871.

644 EXHIBIT 4.

Map showing location of general route of the Northern Pacific railroad from its initial point on Lake Superior through the State of Minnesota, bearing date July 26, 1870, certified by the Commissioner of the General Land Office and signed by J. Gregory Smith, president, and Edwin F. Johnson, engineer-in-chief, of plaintiff corporation, with a memorandum of the date of the receipt of the same at the General Land Office, the full red line on the map indicating the same route as the dotted line on Exhibit 2.

EXHIBIT 5.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *September* 6, 1877.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies on pages one to twenty-two, inclusive, have been compared by me with the originals on file in this office, and that they are true and literal exemplifications thereof.

In testimony whereof I have hereunto subscribed my name

and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Com'r of Gen. Land Office.

[Seal U. S. Gen. Land Office.]

645 EXHIBIT "A."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Aug.* 13, 1870.

SIR: I transmit herewith two maps showing the designated route of the Northern Pacific railroad.

You will immediately direct the proper local land officers in the States of Wisconsin and Minnesota to withhold from sale, pre-emption, homestead, and other disposal the odd-numbered sections not sold, reserved, and to which prior rights have not attached within twenty miles on each side of the route, and in like manner direct those officers in Washington Territory to withhold such odd-numbered sections as lie south of the town of Shilacome. The unsurveyed as well as the surveyed lands will be included in the reservation, and you will direct the local officers to give notice accordingly, and as the township plats are received by them they will make the proper notes of reservation thereon.

The withdrawal will take effect from the receipt of the order at the local office.

Very respectfully, J. D. COX, *Secretary.*

Hon. Jos. S. Wilson, Com'r of the Gen. Land Office.

646 EXHIBIT "B."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *October* 12, 1870.

SIR: I transmit herewith an affidavit of the president and engineer-in-chief of the Northern Pacific Railroad Company, with a map designating the route of said company's road through Minnesota.

The company, as shown by this map, have changed the route of their road in Minnesota. The withdrawal heretofore ordered you will cause to be made to conform to the route designated on this map, and the lands now withdrawn and not within twenty miles of this route to be restored.

Very respectfully, J. D. COX, *Secretary.*

Hon. Jos. S. Wilson, Com'r Gen. Land Office.

EXHIBIT "C."

STATE OF NEW YORK, }
County of New York, } *ss:*

NEW YORK CITY, *October* 1, 1870.

Edwin F. Johnson, of the city, county, and State of New York, deposes and says that he is the engineer-in-chief of the Northern Pa-

cific Railroad Company, and that he has been such engineer-in-chief since June, A. D. 1866.

That during the period above named surveys and explora-
647 tions have been made on various portions of the route proposed for said road for determining its proper location, and that on the thirtieth day of July last, by direction of the board of directors of said railroad company, a written description of an approximate location, with a map or maps duly certified, was filed with the Secretary of the Interior at his office in Washington; whereupon said Secretary, in accordance with the provisions of the Government grant to the said company, ordered the withdrawal from sale, pre-emption, homestead, and other disposal of the odd-numbered sections for twenty miles on either side of the location of said road, as filed in the States of Wisconsin, Minnesota, and Oregon, and in the Territory of Washington, as far north as Seattle, omitting the Territories of Dakota, Montana, Idaho, and the portion of Washington north of Seattle.

The said railroad company, having by recent surveys and examinations attained to a more correct knowledge of the country, and finding that the location of their road, filed by them as above stated, is not adapted throughout in the best manner to the ground, desire to amend their said approximate location by substituting therefor a line or lines better adapted, it is believed, to the purpose of the company and the public, and in consequence the following amendments to and changes in the location referred to have been made and approved by the board of direction of said railroad company, as appears on the records of said company, viz:

Commencing at a point in the location, as filed in the State of Minnesota, one and one-half (1½) miles south of the northwest corner of township forty-eight (48), range sixteen (16), in Carleton county—

648 Thence on a direct course westwardly through said Carleton and Itasca counties to the northwest corner of township one hundred and thirty-five (135), range twenty-nine (29), west a distance of about ninety-six (96) miles.

Thence on a due west course following the line of the townships numbered one hundred and thirty-five (135) and one hundred and thirty-six (136) through Cass and Wadena counties to the southwest corner of township one hundred and thirty-six (136), range thirty-nine (39) west, in Otter Tail county, a distance of about sixty (60) miles.

Thence on a direct course northwestwardly through Otter Tail, Becker, Clay, and Polk counties to a point in the latter county where the north line of township numbered one hundred and forty-four (144) meets the Red River at the western boundary of Minnesota, a distance of about eighty-one (81) miles.

The location as filed of the line of the Northern Pacific railroad from the point above named, one and one-half miles south of the northwest corner of township forty-eight (48), range (16) sixteen west, in Carleton county, Minnesota, to the Red River near George-

town, is hereby withdrawn and the above-described line substituted instead.

The line withdrawn and the line substituted are represented on the accompanying map, entitled "Map exhibiting amendment of line of location of Northern Pacific Railroad in Minnesota, October, 1870."

EDWIN F. JOHNSON,
Engineer-in-Chief N. P. R. R.

649 STATE OF NEW YORK, } ss:
City and County of New York, }

Subscribed and sworn to before me this sixth day of October, 1870.

W. N. GODDARD,
[NOTARIAL SEAL.] *Notary Public, Co. of N. Y.*

It is hereby certified that in pursuance of the act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," and the several acts amendatory thereto—

The Northern Pacific Railroad Company, organized in accordance with said act, did, on the second day of July ult., approve of an approximate location of the line of their road, and caused the same to be filed in the office of the Secretary of the Interior on the 30th day of said July; since which date the said company, from information derived from surveys made under their direction and from information, which they believe to be reliable, otherwise attained, have deemed it their duty to vary the approximate location of the line of their road in the places and to the extent specified above; which changes or variations were approved by a vote of the directors of the said company on the 29th day of September inst., as by the record of said company duly appears.

New York city, October 1st, 1870.

J. GREGORY SMITH,
President.
EDWIN F. JOHNSON,
Engineer-in-Chief N. Pacific R. R.

650 EXHIBIT "D."

Z. B. G. DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 20*th November*, 1871.

SIR: I transmit herewith for appropriate action a duly certified map (received on the 18th inst. from the Hon. Benj. F. Wade, agent and attorney, with his letter of that date) of the completed portion of the Northern Pacific railroad (Minn. Division, 228.2 miles) from a junction with the Lake Superior and Miss. road, at Junction, Minn., to the Red River of the North.

Very respectfully your ob't servant,
C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r G. L. O.

EXHIBIT "E."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *7th Jan.*, 1873.

SIR: I transmit herewith for appropriate action the map of the Minnesota Division of the Northern Pacific railroad, 228 miles, commencing at its junction with the Lake Superior & Mississippi railroad near Thomson, Minnesota, and extending to the Red River of the North. This map shows the line of completed route of said road as examined recently by Government commissioners, and
651 has a profile of said 228 miles attached. I also send you a copy of Dep't letter of yesterday to the President of the United States, recommending the acceptance of this part of the road and of his approval endorsed thereon.

Very respectfully your ob't servant,

B. R. COWEN,
Acting Secretary.

Hon. Willis Drummond, Com'r G. L. O.

EXHIBIT "F."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *6th Jan.*, 1873.

SIR: I have the honor to transmit herewith for your action the report of Messrs. Kauffman, Lands, and Underwood, commissioners appointed by your order to examine and report upon the Northern Pacific railroad.

Under date of 10th ult. these gentlemen reported on the completed portion of said road, commencing at its junction with the Lake Superior and Mississippi railroad near Thomson, Minnesota, and extending to the Red River of the North, a distance of 228 miles.

The commissioners in their report represent that this portion of road has been constructed in a first-class manner. I there-
652 fore recommend the acceptance of the same and the issue of patents for lands due on account of the completion thereof.

Very respectfully your ob't servant,

B. R. COWEN,
Acting Secretary.

To the President.

DEPARTMENT OF THE INTERIOR, *January 6th*, 1873.

B. R. Cowen, acting Secretary, submits to the President report of commissioners on the first 228 miles of Northern Pacific R. R.

EXECUTIVE MANSION, *January 6th*, 1873.

The within recommendations are approved.

U. S. GRANT.

EXHIBIT "G."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 3*d April*, 1874.

SIR: I transmit herewith for your files the application of Jesse P. Farley, receiver of the St. Paul & Pacific Railroad Company, under date of the 31st ultimo, for the institution of legal proceedings by the Attorney General to set aside and cancel the conveyance to the Northern Pacific Railroad Company by patent dated 18th January, 1873, of 29,782.50 acres of the lands awarded by departmental decision to the St. Paul & Pacific Railroad Company.

653 The right of the St. Paul & Pacific Company to said lands is not, in my judgment, so entirely clear as to require me to ask the Attorney General to institute such proceedings, and the parties will accordingly be left to the remedies afforded by the courts.

You will exercise your own judgment as to the propriety of complying with the other request of Mr. Farley.

Be pleased to make known to him the contents of this letter.

I am, sir, very respectfully, your ob't servant,

B. R. COWEN,
Acting Secretary.

Hon. Willis Drummond, Com'r Gen. Land Office.

EXHIBIT "H."

WASHINGTON, D. C., *March* 31*st*, 1874.

Hon. Columbus Delano, Secretary of the Interior:

SIR: Learning with much satisfaction your decision denying the application to re-open the controversy between the Northern Pacific and the St. Paul and Pacific Railroad Companies for further argument, I now have the honor to ask that you request the Attorney General of the United States to institute proceedings in the Federal courts to set aside and cancel the conveyance to the N. P. R. R. Company, by patent dated 18th January, 1873, of 29,782.50 acres of the lands awarded by your decision to the St. Paul and Pacific Company.

So far as I have been able to ascertain, these lands were 654 included in the patent by mistake or inadvertence and without an order from or the knowledge of either the Land Commissioner or the Secretary of the Interior, and consequently the issuance of the patent cannot be considered as the lawful or official act of the Department or of any of its officers; yet the title of the rightful owner is encumbered and clouded by this mistake or inadvertence without the fault of the party injured, and it appears to me that the facts bring the case fully within the rule which requires the Government to take the necessary action, through its officers and at its own expense, to undo the mistake and restore the party aggrieved to as good a position as he would have been in had not the mistake occurred. This is only applying to the Government an

obligation always enforced by the courts between individuals. The case, it seems to me, falls unmistakably within the rule (laid down in Lester) for the government of your Department, and the rule is supported by and predicated upon principles announced in the opinions of the Attorney Generals of the United States.

I would further request that the Commissioner of the General Land Office immediately issue an order vacating the clear lists of lands in controversy, furnished by the local land officers to the North Pacific Company, and order such officers to issue such lists to the St. Paul and Pacific Company on application for the same and payment of legal fees.

Very respectfully submitted,

JESSE P. FARLEY,
Receiver of St. P. and P. R Co.

Horace Austin, attorney for receiver, St. Paul, Minn.

655 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 13th*, 1873.

SIR: I have considered the case of The St. Paul & Pacific Railroad Company *vs.* The Northern Pacific Railroad Company, on appeal from your decision adverse to the former company. The lands in controversy are within the ten-mile limits of the St. Paul & Pacific and the twenty and thirty mile limits of the Northern Pacific, at the point where said roads intersect each other, near Glyndon, in Minnesota. The St. Paul & Pacific claim under the acts of March 3d, 1857, March 3d, 1865, and March 3d, 1871; the Northern Pacific under the act of July 2d, 1864. The line of the St. Paul & Pacific was definitely located along the lands in controversy in August and September, 1871, and prior to the definite location of the Northern Pacific, although said road did, on the 13th of August, 1870, file with the Commissioner of the General Land Office a map of the general route of its road under the sixth section of its charter.

The Northern Pacific Company claim the land by virtue of the provisions of the said sixth section and the withdrawal made by the Secretary of the Interior upon the filing of the map of general route.

The sixth section provides "that the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed and as fast as may be required by the construction of said railroad; and the odd sections hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed except by said company, as provided in this act."

656 The third section shows what lands were granted. The fixing of the general route of the roads exempts the odd sections for forty miles in width on each side of the road from sale, entry, or pre-emption, but it does not exempt them from appropriation in all other ways. It does not exempt them from appropriation by Congress for other purposes. The language used is to be construed strictly against the grantee. It is not general enough to

prohibit an appropriation of the land for the satisfaction of a prior railroad grant. Nor do I think that the withdrawal made on the filing of the map of general route is sufficient to take the lands from the St. Paul & Pacific Company. The act of 1857 provides that "in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections or any parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in alternate sections as shall be equal to such lands as the United States have sold or otherwise appropriated or to which the right of pre-emption has attached as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid."

"And provided further, That any and all lands heretofore
657 reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever be, and the same are hereby, reserved to the United States from the operation of this act," &c.

It will be observed that indemnity is given only for lands sold and to which pre-emption rights have attached and not for lands reserved at the time the line is definitely fixed. These lands were reserved, and therefore do not come within the terms of the act. If it be claimed that the act of 1871 is the source of title for the lands along the altered line, and that these lands were withdrawn or reserved before the passage of that act, it may be replied that the act of 1871 is an amendment of the act of 1857 and purports to alter the line of the road merely, and should be construed as though it were inserted in that act, and when thus read it does not operate to withdraw the lands in controversy because they were not reserved before the passage of the act and are not within its limits.

There is another question which forces itself upon my consideration in this case, not because it has been made or urged by either of the parties, but because a third party has called it to my attention. He alleges that the St. Paul & Pacific railroad can take nothing by the act of 1871 because it was not "in accordance with the legislation of the State of Minnesota." The act provides that it "shall only take effect upon condition of being in accordance with the legislation of the State of Minnesota."

It is charged that it is not in accord with the legislation of
658 that State because she had, on the 7th of March, 1870, passed an act by which she granted the lands claimed by the Lake Superior Branch of the St. Paul & Pacific to the Minneapolis & St. Cloud railroad. I think the object of inserting this clause was

to respect rights that had been acquired under State legislation. If the Minneapolis & St. Cloud road had any vested rights Congress did not propose to interfere with them by allowing a change to be made in the line of the St. Paul & Pacific; but she had no such vested rights. She had never definitely located the line of her road, and all the claim that she could have was a float liable to be defeated by the proper authority at any time before definite location. It was defeated by the change of line and definite location under it. Congress, March 3d, 1873, virtually approved of this changed line, and the State of Minnesota by the act of March 11th, 1873, expressly granted the lands to the St. Paul & Pacific Company. That company have mortgaged them to secure their bonds and a very large amount of the bonds have been sold and are now in the hands of innocent purchasers. Under these circumstances I must overrule the objection and leave the parties to their remedy in the courts if they desire to pursue the subject further.

I am asked by the Northern Pacific to allow that company to select other lands as indemnity in the event that I should award the lands in controversy to the St. Paul & Pacific. I decline to dispose of that question now, and prefer to leave it open until it shall necessarily arise upon a selection being made of other lands for the lands now in controversy, which are hereby awarded to the St. Paul
659 & Pacific upon her showing that she has fully complied with the law in the construction of her road.

Very respectfully, C. DELANO, *Secretary.*

Hon. Willis Drummond, Commissioner G. L. Office.

EXHIBIT 6.

Map or plat showing the location of the St. Vincent Extension of the St. Paul & Pacific railroad, with the certificate of Edmund Rice, president, and Chas. A. F. Morris, chief engineer, of the defendant corporation, same being certificate of said corporation dated Nov. 7, 1871, with the affidavit of Chas. A. F. Morris, chief engineer, of the same date, and the certificate of Horace Austin, Governor of the State of Minnesota, of the same date, said map showing the dates of the definite location and the said location as the same progressed from day to day along said line.

660 EXHIBIT 7.

A map of the location of the St. Paul & Pacific R. R. from Crow Wing to a point near the center of the tier of townships number 142, with the certificate of Edmund Rice, president, David C. Shepard, chief engineer, of the defendant corporation; the affidavit of David C. Shepard, chief engineer, and the certificate of Wm. R. Marshall, Governor of Minnesota, the certificate and affidavit bearing date Oct. 19, 1869, and the certificate of the Governor bearing date the 27th day.

EXHIBIT 8.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *September* 6, 1877.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies on pages one to six, inclusive, have been compared by me with the originals on file in this office, and that they are true and literal exemplifications thereof.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner of General Land Office.

[Seal of U. S. General Land Office.]

661 EXHIBIT "*a*" OF 8.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *February* 16, 1870.

SIR: Under date of the 11th instant I received from you a letter addressed to you by D. C. Shepard, stating he sent affidavits to be used in securing the acceptance of a map of the St. Paul & Pacific railroad.

On the 9th December last the Governor of the State of Minnesota was informed that a map received from him of a portion of the line of said road, not being on the direct route from Crow Wing to St. Vincent, could not be accepted without it was shown by satisfactory evidence that the direct route was impracticable; that the evidence required was an affidavit of the engineer who made the survey, with a sworn copy of the exploration, and such other evidence as might be applicable to the subject.

Two affidavits accompany Mr. Shepard's letter, signed, respectively, by Francis W. Kimball and himself. It appears from these affidavits that no exploration or survey was made on the direct route; that the character of the country was deemed to be impracticable when compared with that selected for the route of the road. This evidence does not meet the requirements of my letter, and cannot be received as establishing the impracticability of the direct route.

I would also call attention to another matter bearing upon this subject. The resolution of Congress, approved July 12, 1862 (12th Stat., 624), provided that this branch line should stop at the
662 intersection of the tenth standard parallel with the fourth guide meridian, a point some fifty miles west of north from Crow Wing, in the direction of St. Vincent. The act of March 3, 1865 (13th Stat., 528), increased the original grant for this and other roads in Minnesota, and provided in section nine that it should be constructed so as to apply and extend to that portion of the line vacated under said resolution.

I am now inclined to think that the grant for this road north of the point at which the original grant was vacated must be held as

conferred by the act of 1865. In that case it would follow that the intersection of the tenth standard parallel with the fourth guide meridian is a point at which the road in going to St. Vincent would be obliged to touch.

Very respectfully, J. D. COX, *Secretary.*

Hon. D. S. Norton, U. S. Senate.

EXHIBIT "*b*" OF 8.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *February* 17, 1870.

SIR: Referring to my letter to you of the 9th December last, in relation to a map of the branch line of the St. Paul and Pacific railroad, I now transmit for your information a copy of a
663 letter from this Department to the Hon. D. S. Norton, U. S. Senate, dated yesterday, on the said subject.

Very respectfully, J. D. COX, *Secretary.*

His excellency Wm. R. Marshall, Governor of Minnesota, St. Paul, Minnesota.

EXHIBIT "*c*" OF 8.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 18*th June*, 1872.

SIR: On the 20th December last I transmitted to your office for appropriate action a map designating the route and location of the St. Paul and Pacific railroad from a point at or near St. Cloud, Minnesota, to St. Vincent, in said State. I stated in my letter of transmission that sufficient evidence had been filed in the Department to show that the change of line indicated by said map was in accord with the legislation of the State of Minnesota, as required by the act of 3d March, 1871 (16 Stat., 588). This evidence was partly in print and partly by oral assurance of an officer of the railroad company.

On the 20th February last a letter was addressed to the Department by Lafayette Emmett, president of the Minneapolis and St. Cloud Railroad Company, alleging that said act of 3d March, 1871, was not only not in accord with the legislation of the State of Minnesota, but directly opposed to it.

664 On the receipt of Mr. Emmett's letter its contents were made known on the 29th February last to the attorney of the St. Paul and Pacific Company in this city, with a request that he at once inform the officers of said company of these allegations, and that unless a satisfactory explanation of them were given to the Department the order withdrawing lands for said road would be revoked.

No explanation of any kind has to this date been made by the company, and any order that may have been issued by your office

withdrawing lands, in accordance with my letter of 20th December last, is hereby revoked.

I am, sir, very respectfully, your ob't servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r Gen. Land Office.

EXHIBIT 9.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *September* 6, 1877.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies, on pages one to fourteen, inclusive, have been compared by me with the records in this office, and that they are true and literal exemplifications thereof.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner of General Land Office.

[U. S. Gen. Land Office Seal.]

665 EXHIBIT "*a*" OF 9.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *February 6th*, 1872.

Register and receiver, Alexandria, Minn.

GENTLEMEN: I transmit herewith a map showing the line of definite location of the St. Paul & Pacific railroad, St. Vincent Extension, with the ten and twenty mile limits of the land grant made thereto under the act of March 3d, 1871.

You are hereby directed to withdraw from sale or location, pre-emption or homestead entry, all the odd-numbered sections falling within those limits and to increase in price to $2.50 per acre all the even-numbered sections within the ten-mile limits and dispose of the same under the pre-emption and homestead laws only and at that ratability, except in cases of settlement under the pre-emption laws made prior to date of definite location of the road—November 7th, 1871. In such cases you will permit the parties to prove up and pay for their claims upon either odd or even numbered sections at the rate of $1.25 per acre.

The even-numbered sections outside of the ten-mile limits are not affected by the withdrawal.

The right of the railroad company attaches from the date of definite location of the road—November 7th, 1871. You will please acknowledge the receipt of this letter by its date.

Very respectfully, WILLIS DRUMMOND, *Com'r.*

666 EXHIBIT "*b*" OF 9.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June* 25, 1872.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: Under date the 18th inst. the honorable Secretary of the Interior revoked my order of the 6th Feb'y last to the reg'r and rec'r at Alexandria, Minn., directing the withdrawal of certain lands for the benefit of the St. Paul & Pacific R. R., St. Vincent Extension, and instructing you to increase in price to $2.50 per acre all the even-numbered sections within the ten-mile limits of said withdrawal and to restrict the disposal of such even sections to homestead and pre-emption.

Upon the receipt of these instructions you will hold all the lands affected by said order of withdrawal for the benefit of some other railroad. You will at once publish a notice in two issues of a newspaper of general circulation in your district to the effect that said order of withdrawal has been revoked.

The receiver, acting as disbursing agent, will defray the expenses of such notice and refer on his vouchers to this letter as his authority for the disbursement.

You will please acknowledge the receipt hereof and forward to this office a copy of the paper containing the notice referred to.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

667 EXHIBIT "*c*" OF 9.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *April 7th*, 1873.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: I transmit herewith a copy of the decision of the Hon. Secretary of the Interior, dated the 22d ult.; also a copy of the opinion of the Hon. Walter H. Smith, assistant Attorney General, relative to the right of the Northern Pacific R. R. Co. under the 6th section of the act organizing said company, approved July 2d, 1864 (Stat. 13, p. 365).

The Secretary concurs in the opinion of the assistant Attorney General that said section operates as a withdrawal of the lands within the limits of the grant, both surveyed and unsurveyed, from the date of the acceptance of the map of general route by the Department, and directs the cancellation of all entries or locations made subsequent to that time, if shown to be still within the grant after the definite location of the road.

The map of general route through Minnesota was filed and accepted by the Department August 13, 1870, upon which a withdrawal of the odd sections within twenty miles of the line in your district was ordered by letter from this office dated Sept. 15, 1870. The company subsequently filed an amended map of general route

through Minnesota, which was accepted by the Department October 12, 1870, and the withdrawal was amended to conform thereto by instructions from this office dated November 7th, 1870.

668 The road is now definitely located in Minnesota, and in accordance with the above-mentioned decision I have this day canceled the following entries and filings in your district, which are shown by the records of this office to come under said ruling and not yet patented, to wit:

Cash entry No. 118, by John Lisk, dated November 8th, 1872, for lot 1, sec. 3, and s. ½ n. w. ¼ and lot 4, sec. 2, t'p 137, r. 40, based on D. S. No. 1129 (Alexandria series), dated Sept. 24, 1870, and March 26, 1872. The entry will be allowed to stand for that portion contained in the even section, if the party's residence and improvements are upon that tract, unless he desires the entire entry canceled.

Cash entry No. 81, by Henry Henderson, for the s. e. ¼ n. e. ¼ and lots 3, 5, and 6, sec. 13, 145, 49, dated Aug. 24, 1872, based on D. S. 533, dated June 13, 1871, and Aug. 2, 1872.

Cash entry No. 145, Francis Myers, for lots 1, 2, 3, 6, and 7, sec. 1, t'p 137, r. 40; and lots 5 and 6, sec. 6, t'p 137, r. 39, dated Dec. 28, 1872, based on D. S. No. 566, dated Sept. 15, 1870, and Aug. 19, 1872.

The entry will be allowed to stand for lots 5 and 6, sec. 6, t'p 137, r. 39, if the party's residence and improvements are upon that tract, unless he desires otherwise.

Cash entry No. 159, Walter Gorman for s. w. ¼ n. e. ¼, s. e. ¼ n. w. ¼, and lots 3, 4, and 5, sec. 18; and lot 9, sec. 7, t'p 137, r. 39, based on D. S. No. 214, dated Sept. 18, 1870, and June 21, 1872. This entry is canceled only for lot 9 of sec. 7, said township and range.

669 You will notify the above parties of the cancellation of their entries, or that portion of them conflicting with the railroad company, to make application for the return of their purchase-money.

A. C. script No 520, Va. R. and R. No. 20, Jacob Anderson, dated July 23, 1872, for n. w. ¼, sec. 13, t'p 129, r. 42, based on D. S. No. 1065 (Alexandria series), dated Sept. 1, 1870, Feb. 12, 1872.

A. C. script No. 523, Va. R. and R. 23, by Freeman K. Small, July 26, 1872, e. ½ n. e. ¼, 21, and w. ½ n. w. ¼, 22, t'p 139, r. 42, based on D. S. 1017 (Alexandria series), dated Sept. 17, 1870, and Jan. 29, 1872.

A. C. script No. 524, Va. R. and R. 24, by Moody Cook, Aug. 29, 1870, n. ½ s. w. ¼ and s. ½ n. w. ¼, sec. 1, t'p 139, r. 42, based on D. S. No. 1025 (Alexandria series), dated Aug. 29, 1870, and Jan. 29, 1872.

A. C. script No. 584, Va. R. & R. 34, Nels. R. Hage, August 27, 1872, lot 6, and n. e. ¼ s. e. ¼, sec. 1, t'p 145, r. 49, and lots 6 and 7, s. e. ¼ s. w. ¼, sec. 6, t'p 145, r. 48, based on D. S. 538 (Alexandria series), dated June 15, 1871, and August 2, 1872.

A. C. script No. 1664, Ga. R. & R. 81, James Winram, July 13, 1873, on w. ½ s. w. ¼, 14, and e. ½ s. e. ¼, 15, t'p 138, r. 40, based on D.

S. No. 1008 (Alexandria series), dated August 23, 1870, and January 27, 1872.

The script is herewith returned for delivery to the parties, with certificates attached, allowing relocations without payment of additional fees.

Homestead entry No. 89 for lot 1, sec. 25, t'p 145, r. 49, by Gustave A. Oberg, dated August 20, 1872.

Homestead entry No. 90, by Henry Hawkins, August 20, 1872, for the w. ½ n. e. ¼, s. e. ¼ n. w. ¼, lot 1, sec. 31, t'p 145, r. 48.

670 Homestead entry No. 92, by Alfred Holloway, August 23, 1872, for the n. e. ¼, sec. 29, t'p 144, r. 46.

Homestead entry No. 102, by Rasmus R. Hage, August 28, 1872, for the w. ½ s. w. ¼, sec. 7, t'p 145, r. 48.

You will note these cancellations on your records, and, where the entire entry is cancelled, allow the party to make a new entry without payment of additional fees or commissions.

Warrant location, R. & R., No. 12, w't No. 74955, act of 1850, on the n. e. ¼ s. w. ¼, sec. 7, t'p 140, r. 48, by Elisha C. Sprague, Sept. 2, 1870.

The warrant is herewith returned, with a certificate attached, allowing the party to relocate it without payment of additional fees.

Declaratory Statements.

D. S. 298, June 10, 1871, and June 24, 1872, Andrew Larson, s. w. ¼.

D. S. 23, 141, 44.

D. S. 388, Sept. 4, 1870, and July 2, 1872, Ole Monson, n. ½ n. e. ¼, 25, 138, 42.

D. S. 428, August 20, 1870, and July 8, 1872, Halvor Halvorson, n. ½ n. e. ¼, 27, 139, 44.

D. S. 444, June 25, 1870, and July 10, 1872, Peter O. Voler, n. w. ¼ n. w. ¼, 13, 143, 44.

D. S. 525, June 3, 1871, and August 2, 1872, Engle Severtson, e. ½ n. w. ¼, s. w. ¼ n. e. ¼, and lots 1 and 2, sec. 7, 145, 48.

D. S. 526, July 3, 1871, and August 2, 1872, Andrew O. Paulson, e. ½ s. e. ¼, 3, 145, 48.

D. S. 527, July 3, 1871, and August 2, 1872, Annie Knudson, n. w. ¼, 13, 145, 48.

671 D. S. 529, July 1, 1871, and August 2, 1872, John Grutle, n. e. ¼ s. w. ¼, s. e. ¼ n. w. ¼, s. w. ¼ n. e. ¼, n. w. ¼ s. e. ¼, 3, 145, 48.

D. S. 530, July 3, 1871, and August 2, 1872, Louis S. Huske, w. ½ n. w. ¼, 19, 145, 48.

D. S. 532, June 16, 1871, and August 2, 1872, Albert O. Savum, s. e. ¼ n. e. ¼, 1, 145, 48.

D. S. 534, July 3, 1871, and August 8, 1872, Ole Halsted, s. e. ¼, 11, 145, 48.

D. S. 535, July 3, 1871, and August 8, 1872, Ole J. Paulson, n. e. ¼, 11, 145, 48.

D. S. 537, October 1, 1871, and August 8, 1872, Jacob Hasby, lots 1 and 2, sec. 1, 145, 49.

D. S. 539, August 30, 1871, and August 3, 1872, Betsey Johnson, e. ½ n. e. ¼, 3, 145, 48.

D. S. 549, June 1, 1871, and August 10, 1872, Casemere Trouble, lots 7 and 8, 13, 145, 49.

D. S. 570, July 1, 1871, and August 21, 1872, Ole Hanson, n. w. ¼, 35, 144, 44.

D. S. 571, May 28, 1872, and August 21, 1872, Edward Dean, w. ½ n. w. ¼, 13, 144, 46.

D. S. 572, July 18, 1872, and August 21, 1872, W. C. Darling, n. w. ¼, 27, 144, 46.

D. S. 573, July 18, 1872, and August 21, 1872, Samuel Darling, n. e. ¼, 27, 144, 46.

D. S. 586, Nov. 25, 1870, and August 24, 1872, Charles Halenbarg, lots 3 and 4, 19, 145, 48.

D. S. 587, June 3, 1871, and August 26, 1872, Andrew Johnson, s. ½ s. e. ¼, 25, 144, 44.

D. S. 588, June 3, 1871, and August 26, 1872, Soren Burgison, e. ½ n. e. ¼ and n. e. ¼ s. e. ¼, 35, 144, 44.

672 D. S. 589, June 3, 1871, and August 26, 1872, Gilbert Hogenson, w. ½ n. e. ¼ and n. w. ¼ s. e. ¼, 35, 144, 44.

D. S. 598, August 1, 1871, and Sept. 2, 1872, A. B. McDonald, e. ½ s. e. ¼ and lot 4, 31, 138, 42.

D. S. 612, June 25, 1871, and Sept. 14, 1872, Charles L. Gordon, n. ½ n. w. ¼ and s. w. ¼ n. w. ¼, 3, 145, 48.

D. S. 1037 (Alex. series), Sept. 20, 1870, and January 29, 1872, Herman Olsen Wegager, s. e. ¼ n. e. ¼, n. e. ¼ s. e. ¼, and lots 9 and 10 and 11 and 12, sec. 1, t'p 139, r. 43.

You will note these cancellations on your records and advise the parties of the fact.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

673 EXHIBIT "*d*" OF 9.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., *July 9th*, 1873.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: Referring to your letter of 13th ult., calling my attention to the Secretary's decision of 13th May last, in the contest between the Northern Pacific R. R. Co. and the St. Vincent Extension of the St. Paul and Pacific R. R. Co., relative to the lands within the conflicting limits of the two roads, and asking the effect of said decision upon the entries and filings falling within said limits, cancelled by my letter of 7th April last—

I have to state that these lands were withdrawn by act of July 2nd, 1864, along the entire line in Minnesota, from August 13, 1870, without requiring any action on the part of this office, and from that date the lands were no longer subject to entry, no matter to which

road the lands subsequently enured; therefore the decision of the Department of May 13th last does not affect the entries cancelled by my letter of 7th April last.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

674 EXHIBIT 10.

List of lands subject to selection by the Northern Pacific Railroad Company in the Fergus Falls (late Alexandria) land district within the forty (40) mile limits of the grant to said company, as appears by the records of this office, including, however, lands which have been awarded to the St. Paul & Pacific, St. Vincent Extension, Railroad Company within said limits.

Township.	Range.	Acres.	Remarks.
127	36		No lands.
128	"	241.49	
129	"	1,920	
130	"	9,473.36	
131	"	4,926.95	
132	"		All certified.
133	"		Do.
134	"		Do.
135	"		Do.
136	"		Do.
128	37	80	
129	"	1,526.42	
130	"	5,518.80	
131	"	5,004.17	
132	"	1,564.25	
133 to 136, inc.	"		All certified.
128	38		No lands.
129	"	448.83	
130	"	1,272.84	
131	"	8,955.36	
132	"	8,485.94	
133	"	595.88	
134 to 136	"		All certified.
128	39		No lands.
129	"	243.84	
130	"	956.56	
131	"	9,697.85	
132	"	9,023	
133	"	1,545.80	
134	"	95	
135 & 136	"		All certified.

Exhibit 10—Continued.

Township.	Range.	Acres.	Remarks.
129	40		No lands.
130	"	923.57	
131	"	5,325.59	
132	"	1,743.89	
133	"	1,029.55	
134	"	1,620.37	
135	"	372.33	
136	"		All certified.
129	41		No lands.
130	"	172.42	
131	"	819.34	
132	"	2,260.80	
133	"	6,960.33	
134	"	8,579.72	
135	"	7,251.37	
136	"	1,546.31	
130	42	222.23	
131	"	112.40	
132	"	101.94	
133	"	3,751.13	
134	"	10,069.00	
135	"	10,316.39	
136	"	5,879.72	
131	43	3,177.48	
132	"	1,251.53	
133	"	40	
134	"	2,343.52	
135	"	9,362.29	
136	"	7,720.62	
132	44	2,461.92	
133	"	460.45	
134	"	2,067.59	
135	"	3,683.56	
136	"	3,460.59	
133	45	7,869.77	
134	"	8,809.93	
135	"	4,254.46	
136	"	5,014.36	
133	46	8,452.69	
134	"	8,059.70	
135	"	7,902.52	
136	"	10,965.34	
133	47	800	
134	"		No lands.

Exhibit 10—Continued.

Township.	Range.	Acres.	Remarks.
135	47	11,349.68	
136	"	11,420.74	
134	48		No lands.
135	"		Do.
136	"		Do.
Total No. of acres		240,563.58	

U. S. LAND OFFICE,
FERGUS FALLS, MINN., *September* 12*th*, 1877.

We hereby certify that the foregoing list is a true and correct statement of all the lands subject to selection by the Northern Pacific Railroad Company in this district within the forty-mile limits of the grant to said company, as appears by the records of this office, including, however, lands which have been awarded to the St. Paul & Pacific, St. Vincent Extension, Railroad Company within said limits.

SOREN LISTOE, *Register.*
—— ——, *Receiver.*

677

EXHIBIT 11.

U. S. LAND OFFICE,
ST. CLOUD, MINNESOTA, *September* 10, 1877.

Statement of lands subject to selection by the Northern Pacific Railroad Company in the district of lands subject to sale at St. Cloud, Minnesota, within the 40-mile limits of the grant to said railroad company, including lands which have been awarded to the St. Vincent Extension of the St. Paul & Pacific Railroad Company within said limits, to wit:

Township No.	Range.	P. M.	Acres.	Township No.	Range.	P. M.	Acres.
46	24	4th	5,361.03	55	24	4th	240.00
47	"	"	9,911.54	46	25	"	10,554.20
48	"	"	10,897.60	47	"	"	11,289.32
49	"	"	10,687.72	48	"	"	3,239.58
50	"	"	11,204.93	49	"	"	11,122.93
51	"	"	11,538.11	50	"	"	11,503.83
52	"	"	11,474.87	51	"	"	11,704.33
53	"	"	10,371.01	52	"	"	11,016.88
54	"	"	6,535.90	53	"	"	9,164.30

Exhibit 11—Continued.

Township No.—	Range.	P. M.	Acres.
54	25	4th	2,728.45
46	26	"	9,696.06
47	"	"	11,663.59
48	"	"	4,827.98
49	"	"	6,318.67
50	"	"	5,010.20
51	"	"	6,105.22
52	"	"	6,461.36
53	"	"	6,128.19
54	"	"	3,503.87
46	27	"	9,008.33
47	"	"	10,280.95
48	"	"	2,316.88
49	"	"	5,639.16
50	"	"	3,673.24
51	"	"	3,818.79
52	"	"	3,176.13
53	"	"	3,345.42
54	"	"	1,145.00
41	28	"	840.00
42	"	"	2,058.48
43	"	"	5,019.24
678			
44	"	"	8,101.71
45	"	"	8,030.86
46	"	"	10,090.69
47	"	"	7,899.62
39	29	"	40.00
40	"	"	120.00
43	"	"	160.00
44	"	"	4,200.00
45	"	"	6,537.57
46	"	"	10,732.75
47	"	"	5,406.84
44	30	"	5,490.00
45	"	"	9,287.13
46	"	"	3,282.90
47	"	"	332.50
44	31	"	4,291.01
45	"	"	23.13
139	25	5th	6,167.82
140	"	"	8,481.51
141	"	"	11,349.81
142	"	"	5,291.69
138	26	"	880.00
139	"	"	4,982.78
140	26	5th	9,684.81
141	"	"	8,994.14
142	"	"	3,023.26
138	27	"	4,375.24
139	"	"	5,404.92
140	"	"	10,531.93
141	"	"	7,396.89
142	"	"	480.00
137	28	"	1,629.14
138	"	"	8,171.30
139	"	"	9,223.91
140	"	"	6,471.83
141	"	"	1,484.76
136	29	"	161.75
137	"	"	8,399.56
138	"	"	6,394.97
139	"	"	6,442.63
140	"	"	7,270.54
141	"	"	563.54
136	30	"	1,226.00
137	"	"	11,379.89
138	"	"	10,006.11
139	"	"	7,359.21
140	"	"	2,807.11
136	31	"	1,016.29
137	"	"	11,258.11
138	"	"	10,855.65
139	"	"	10,167.77
140	"	"	2,962.72
128	32	"	123.37
130	"	"	414.64
137	"	"	10,052.38
138	"	"	11,490.77
139	"	"	11,403.52
140	"	"	6,404.39
128	33	"	1,715.21
129	"	"	452.15
130	"	"	517.00
137	"	"	4,563.30
138	"	"	11,267.50
139	"	"	9,564.83
679			
140	"	"	9,608.42
141	"	"	1,102.19
127	34	"	116.18
128	"	"	2,028.80

Exhibit 11—Continued.

Township No.	Range.	P. M.	Acres.	Township No.	Range.	P. M.	Acres.
129	34	5th	1,200.00	130	35	5th	3,483.84
130	"	"	1,640.00	131	"	"	431.77
137	"	"	1,067.96	138	35	"	5,786.02
138	"	"	9,659.87	139	"	"	10,667.40
139	"	"	9,254.60	140	"	"	10,296.67
140	"	"	9,959.45	141	"	"	11,520.00
141	"	"	4,978.86	142	"	"	8,160.00
142	"	"	386.56	143	"	"	480.00
128	35	"	2,829.91				
129	"	"	5,485.68		Total		755,040.75

UNITED STATES LAND OFFICE,
ST. CLOUD, MINNESOTA, *September* 10, 1877.

We hereby certify that the foregoing list is a true and correct statement of all the lands subject to selection by the Northern Pacific Railroad Company in the district of lands subject to sale at St. Cloud, Minnesota, within the forty-mile limits of the grant to said company, as appears by the records of this office, including, however, lands which have been awarded to the St. Paul & Pacific Railroad Company (St Vincent Extension) within said limits.

(Signed) J. V. BROWER, *Register.*
OLE PETERSON, *Receiver.*

680 EXHIBIT 12.

Abstract of lands subject to selection by the Northern Pacific Railroad Company in the Detroit, Minn., land district, within the forty-mile limit of the grant to said company.

Township.	Range.	Acres.	100ths.	Township.	Range.	Acres.	100ths.
139	36	10,781	92	143	45	8,221	33
140	"	10,875	22	144	"	10,345	04
Unsurveyed 141	"			145	"	11,609	90
				146	"	6,904	94
142	"	9,783	39	143	46	10,080	17
143	"	7,657	71	144	"	11,511	20
144	"	320		145	"	11,175	96
139	37	10,812	91	146	"	4,422	97
140	"	9,622	03	141	47	6,120	83
139	38	9,703	61	143	"	9,769	45
140	"	7,825	13	144	"	11,384	53
139	39	9,350	22	145	"	6,066	39
140	"	7,674	86	146	"	320	
139	40	8,250	56	143	48	3,547	63
140	"	7,832	30	144	"	11,383	32
143	43	7,507	14	145	"	5,063	79
144	"	11,291	82	146	"	4,906	10
145	"	11,507	07	145	49	362	50
146	"	7,272	62	146	"	771	14
143	44	7,300	95	137	42	4,081	13
144	"	11,495	75	"	43	10,689	15
145	"	11,485	62	"	44	9,631	24
146	"	7,797	50	138	47	7,645	61
				Total		352,162	65

681 U. S. LAND OFFICE,
DETROIT, MINN., *Sept. 1st*, 1877.

We hereby certify that the foregoing list is a true and correct statement of all the lands subject to selection by the Northern Pacific Railroad Company in this district within the forty-mile limit of the grant to said company, as appears by the records of this office, including, however, lands which have been awarded to the St. Paul & Pacific R. R. Co., St. Vincent Extension, within said limits.

THOS. C. SHAPLEIGH, *Register*.
O. C. SLETTEN, *Receiver*.

EXHIBIT 13.

	Description.	Section.	Township.	Range.	No. acres.
	Lot No. 1	5	53 n.	17 w.	34.88
	" 2	5	53	17	39.79
	S ½ of n w ¼	5	53	17	80.00
	N e ¼ of s w ¼	5	53	17	40.00
	S w ¼ of n e ¼	5	53	17	40.00
	N w ¼ of s e ¼	5	53	17	40.00
	Secs 1, 3, and 5, t'p 53—18, all swamp.				
	Lot No. 1	1	53	19	42.64
	" 2	1	53	19	49.32
	S ½ of n e ¼	1	53	19	80.00
	S e ¼ of n w ¼	1	53	19	40.00
	Lot No. 1	3	53	19	40.34
	" 2	3	53	19	40.78
	" 3	3	53	19	41.22
	" 4	3	53	19	41.66
	Lot No. 1	5	53	19	39.42
682	Lot No. 1	1	53	22	42.16
	" 2	1	53	22	41.80
	Lot No. 3	1	53	22	41.44
	" 4, swamp	1	53	22	
	" 2	3	53	22	42.14
	" 3	3	53	22	43.54
	N w ¼, s e ¼	3	53	22	40.00
	S ½, s e ¼	3	53	22	80.00
	S e ¼, s w ¼	3	53	22	40.00
	Balance sec 3 all swamp.				
	S ½ of s e ¼	5	53	22	80.00
	Balance sec 5 all swamp.				
	N ½ of n w ¼	9	53	22	80.00
	Balance of sec 9 in limits swamp.				
	Secs 7, 53, 22, all swamp.				
	Lot No. 4	1	53	23	50.22
	" 5	1	53	23	38.70
	S w ¼ of s w ¼	1	53	23	40.00
	Balance sec 1 all swamp.				
	Lot No. 1	3	53	23	47.56
	" 2	3	53	23	46.26
	" 3	3	53	23	44.95
	" 4	3	53	23	43.65
	" 5	3	53	23	38.75
	" 6	3	53	23	16.50
	" 7	3	53	23	35.25
	N ½ of s e ¼	3	53	23	80.00
	N ½ of s w ¼	3	53	23	80.00
	S e ¼ of s e ¼ 3, 53, 22, swamp.				
	Lot No. 1	5	53	22	33.03

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
683	Lot No. 3	5	53	22	30.50
	" 4	5	53	22	29.45
	Lot No. 5	5	53	22	37.90
	" 6	5	53	22	39.80
	S ½ of s w ¼	5	53	22	80.00
	S w ¼ of s e ¼	5	53	22	40.00
	Lot No. 2 and n w ¼ of s w ¼ 5, 53, 22, swamp.				
	Lot No. 1	7	53	23	64.35
	" 2	7	53	23	62.65
	S e ¼ of n w ¼	7	53	23	40.00
	E ½ of n e ¼	7	53	23	80.00
	N w ¼ of s e ¼	7	53	23	40.00
	S e ¼ of s e ¼	7	53	23	40.00
	Balance sec 7 all swamp.				
	Lot No. 1	9	53	23	2.25
	" 2	9	53	23	36.00
	" 3	9	53	23	24.00
	" 5	9	53	23	32.75
	" 6	9	53	23	28.00
	N e ¼ of n e ¼	9	53	23	40.00
	S ½ of n e ¼	9	53	23	80.00
	E ½ of n w ¼	9	53	23	80.00
	S w ¼ of n w ¼	9	53	23	40.00
	N w ¼ of s w ¼	9	53	23	40.00
	E ½ of s e ¼	9	53	23	80.00
	Lot No. 4 and n w ¼ of n e ¼ and s w ¼ of s w ¼ 9, 53, 23, all swamp.				
	N w ¼	11	53	23	160.00
	S w ¼	11	53	23	160.00
	S e ¼ of n e ¼	11	53	23	40.00
684	W ½ of s e ¼	11	53	23	80.00
	N e ¼ of s e ¼	11	53	23	40.00
	Balance sec 11, 53, 23, all swamp.				
	S e ¼ of s w ¼	13	53	23	40.00
	Balance sec 13 swamp.				
	N w ¼	15	53	23	160.00
	W ½ n e ¼	15	53	23	80.00
	N e ¼ of n e ¼	15	53	23	40.00
	Balance sec 15 in limits swamp.				
	Lot No. 1	17	53	23	34.90
	" 3	17	53	23	46.80
	" 4	17	53	23	26.05
	" 5	17	53	23	48.30
	" 6	17	53	23	24.15
	" 7	17	53	23	8.25
	" 8	17	53	23	42.20

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	E ½ of n e ¼	17	53	23	80.00
	S w ¼ of s e ¼	17	53	23	40.00
	Balance of sec 17 swamp and river.				
	Lot No. 1	19	53	23	53.08
	" 2	19	53	23	52.06
	Balance sec 19 in limit swamp.				
	Township No. 54, R 17, not surveyed.				
	Secs 1 and 3, tp 54, R 18, all swamp.				
	Lot No. 4	5	54	18	38.73
	S w ¼ of n w ¼	5	54	18	40.00
	Balance sec 5 swamp.				
	Sec. 7 all swamp.				
	N e ¼ of n e ¼	9	54	18	40.00
	N e ¼ of n w ¼	9	54	18	40.00
685	W ½ of n w ¼	9	54	18	80.00
	S e ¼ of s e ¼	9	54	18	40.00
	Balance sec 9 all swamp.				
	S ½ s w ¼	11	54	18	80.00
	S w ¼ s e ¼	11	54	18	40.00
	Balance sec 11 all swamp.				
	N e ¼ s e ¼	13	54	18	40.00
	S ½ s e ¼	13	54	18	80.00
	S ½ s w ¼	13	54	18	80.00
	N ½ n w ¼	13	54	18	80.00
	S e ¼ n e ¼	13	54	18	40.00
	Balance section 13 all swamp.				
	N e ¼	15	54	18	160.00
	S e. ¼	15	54	18	160.00
	E ½ of s w ¼	15	54	18	80.00
	Lot No. 1	15	54	18	35.55
	" 2	15	54	18	1.20
	N w ¼ of n w ¼	15	54	18	40.00
	Balance sec 15 all swamp.				
	S w ¼ of s e ¼	17	54	18	40.00
	S e ¼ of s w ¼	17	54	18	40.00
	Balance sec 17 all swamp.				
	E ½ of n e ¼	19	54	18	80.00
	E ½ of s e ¼	19	54	18	80.00
	Balance of sec 19 all swamp.				
	Lot No. 1	21	54	18	29.50
	" 2	21	54	18	34.00
	" 3	21	54	18	50.90
	" 4	21	54	18	37.75
	Lot No. 5	21	54	18	.85
686	N w ¼ of n e ¼	21	54	18	40.00
	S e ¼ of n w ¼	21	54	18	40.00
	S w ¼ of s e ¼	21	54	18	40.00

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
S w ¼	21	54	18	160.00
Balance section 21 swamp.				
Lot No. 1	23	54	18	51.50
" 2	23	54	18	34.00
" 3	23	54	18	39.00
" 4	23	54	18	35.50
" 5	23	54	18	37.67
" 6	23	54	18	22.60
" 7	23	54	18	12.50
" 8	23	54	18	22.75
N w ¼ of n w ¼	23	54	18	40.00
S w ¼	23	54	18	160.00
W ½ s e ¼	23	54	18	80.00
E ½ s e ¼ swamp.				
N w ¼	25	54	18	160.00
W ½ n e ¼	25	54	18	80.00
N ½ s w ¼	25	54	18	80.00
Balance sec 25 swamp.				
W ½ n w ¼	27	54	18	80.00
S w ¼ of s w ¼	27	54	18	40.00
Balance sec 27 swamp.				
Lot No. 1	29	54	18	29.70
" 2	29	54	18	46.30
" 3	29	54	18	45.50
" 4	29	54	18	21.75
" 5	29	54	18	37.90
Lot No. 6	29	54	18	39.60
687 " 7	29	54	18	28.00
" 8	29	54	18	8.85
S e ¼ of n e ¾	29	54	18	40.00
N ½ of n w ¼	29	54	18	80.00
S w ¼ n w ¼	29	54	18	40.00
S e ¼ of s w ¼	29	54	18	40.00
N w ¼ of s e ¼	29	54	18	40.00
Balance of sec 29 swamp and river.				
Lot No. 2	31	54	18	41.50
" 3	31	54	18	34.40
" 4	31	54	18	39.75
" 5	31	54	18	17.00
" 6	31	54	18	17.25
" 9	31	54	18	41.78
" 10	31	54	18	32.75
" 11	31	54	18	43.25
" 12	31	54	18	31.50
E ½ of n w ¼	31	54	18	80.00
E ½ of s w ¼	31	54	18	80.00
Balance sec 31 swamp and river.				

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	Sec 33, 54, 18, all swamp.				
	N e ¼ of n e ¼	35	54	18	40.00
	Balance sec 35 swamp.				
	S ½ of s w ¼	1	54	19	80.00
	Balance sec 1 swamp.				
	Lot No. 3	3	54	19	39.99
	" 4	3	54	19	40.06
	S ½ of n w ¼	3	54	19	80.00
	W ½ of s w ¼	3	54	19	80.00
	Balance sec 3 swamp.				
688	Lot No. 1	5	54	19	39.60
	" 2	5	54	19	39.29
	Lot No. 3	5	54	19	38.97
	" 4	5	54	19	36.66
	" 5	5	54	19	26.35
	" 6	5	54	19	35.00
	" 7	5	54	19	42.30
	" 8	5	54	19	32.80
	" 9	5	54	19	39.60
	S e ¼ of n w ¼	5	54	19	40.00
	S ½ of n e ¼	5	54	19	80.00
	S e ¼	5	54	19	160.00
	N e ¼	7	54	19	160.00
	E ½ of n w ¼	7	54	19	80.00
	Lot No. 1	7	54	19	36.15
	" 2	7	54	19	36.45
	" 3	7	54	19	36.75
	" 4	7	54	19	37.05
	E ½ of s w ¼	7	54	19	80.00
	S e ¼	7	54	19	160.00
	N e ¼	9	54	19	160.00
	N w ¼	9	54	19	160.00
	S w ¼	9	54	19	160.00
	W ½ of s e ¼	9	54	19	80.00
	N e ¼ of s e ¼	9	54	19	40.00
	S e ¼ of s e ¼ 9, 54, 19, swamp.				
	S e ¼ of n e ¼	11	54	19	40.00
	N e ¼ of s e ¼	11	54	19	40.00
	Balance of sec 11 swamp				
	Secs 13 and 15 all swamp.				
689	Lot No. 1	17	54	19	40.00
	" 2	17	54	19	34.80
	Lot No. 3	17	54	19	31.30
	" 4	17	54	19	44.00
	" 5	17	54	19	40.30
	" 6	17	54	19	34.55
	" 7	17	54	19	43.50
	" 8	17	54	19	32.00

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	E ½ of n e ¼	17	54	19	80.00
	E ½ of s e ¼	17	54	19	80.00
	W ½ of n w ¼	17	54	19	80.00
	N w ¼ of s w ¼	17	54	19	40.00
	S w ¼ of s w ¼ swamp.				
	S e ¼ of s e ¼	19	54	19	40.00
	Balance of sec 19 all swamp.				
	S e ¼	21	54	19	160.00
	S w ¼	21	54	19	160.00
	S w ¼ of n w ¼	21	54	19	40.00
	Balance sec 21 all swamp.				
	W ½ of n e ¼	23	54	19	80.00
	S e ¼ of n w ¼	23	54	19	40.00
	N ½ of s w ¼	23	54	19	80.00
	S e ¼ of s w ¼	23	54	19	40.00
	W ½ of s e ¼	23	54	19	80.00
	Balance sec 23 all swamp.				
	Sec 25 all swamp.				
	N w ¼ of n e ¼	27	54	19	40.00
	W ½ of s w ¼	27	54	19	80.00
	Balance of sec 27 swamp.				
	Lot No. 1	29	54	19	35.00
690	Lot No. 2	29	54	19	39.40
	" 3	29	54	19	53.20
	Lot No. 4	29	54	19	20.40
	" 5	29	54	19	51.80
	" 6	29	54	19	22.15
	" 7	29	54	19	35.65
	" 8	29	54	19	37.60
	E ½ of n e ¼	29	54	19	80.00
	W ½ of n w ¼	29	54	19	80.00
	S w ¼	29	54	19	160.00
	S e ¼	31	54	19	160.00
	Balance sec 31 all swamp.				
	Lot No. 1	33	54	19	39.75
	" 2	33	54	19	39.95
	N w ¼ of n w ¼	33	54	19	40.00
	E ½ of n w ¼	33	54	19	80.00
	E ½ of s w ¼	33	54	19	80.00
	S w ¼ of s w ¼	33	54	19	40.00
	S e ¼	33	54	19	160.00
	N e ¼	33	54	19	160.00
	Section 35 all swamp.				
	Lot No. 1	1	54	20	40.10
	S ½ of n e ¼	1	54	20	80.00
	S e ¼	1	54	20	160.00
	S w ¼	1	54	20	160.00

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	Balance sec 1 all swamp.				
	Lot No. 2	3	54	20	40.80
	S ½ of n e ¼	3	54	20	80.00
	E ½ of s e ¼	3	54	20	80.00
	Balance of section 3 swamp.				
691	S e ¼ of n e ¼	5	54	20	40.00
	N ½ of s e ¼	5	54	20	80.00
	Balance sec 5 swamp.				
	Sec 7 all swamp.				
	S e ¼ of s e ¼	9	54	20	40.00
	Balance sec 9 swamp.				
	N e ¼	11	54	20	160.00
	N w ¼	11	54	20	160.00
	S e ¼	11	54	20	160.00
	N e ¼ of s w ¼	11	54	20	40.00
	Balance sec 11 swamp.				
	N e ¼	13	54	20	160.00
	S e ¼	13	54	20	160.00
	S w ¼	13	54	20	160.00
	S ½ of n w ¼	13	54	20	80.00
	N e ¼ of n w ¼	13	54	20	40.00
	N w ¼ of n w ¼ swamp.				
	All of secs 15 and 17 swamp.				
	Lot No. 4	19	54	20	39.66
	S e ¼ of s e ¼	19	54	20	40.00
	Balance sec 19 swamp.				
	S e ¼ of s w ¼	21	54	20	40.00
	Balance sec 21 swamp.				
	All of secs 23, 25, and 27 swamp.				
	N ½ of n w ¼	29	54	20	80.00
	Balance sec 29 swamp.				
	Section 31 all swamp.				
	N w ¼ of n e ¼	33	54	20	40.00
	S e ¼ of s w ¼	33	54	20	40.00
	Balance sec 33 swamp.				
692	Section 35 all swamp.				
	Sections 1 and 3, 54, 21, all swamp.				
	Lot No. 1	5	54	21	38.72
	" 2	5	54	21	38.57
	" 3	5	54	21	38.42
	" 4	5	54	21	38.27
	S ½ of n e ¼	5	54	21	80.00
	S ½ of n w ¼	5	54	21	80.00
	N ½ of s w ¼	5	54	21	80.00
	W ½ of s e ¼	5	54	21	80.00
	Balance sec 5 swamp.				

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
Lot No. 1	7	54	21	30.60
" 2	7	54	21	40.44
" 3	7	54	21	40.55
" 4	7	54	21	50.05
" 5	7	54	21	27.70
" 6	7	54	21	42.80
N e ¼	7	54	21	160.00
E ½ of n w ¼	7	54	21	80.00
E ½ of s e ¼	7	54	21	80.00
N w ¼ of s e ¼	7	54	21	40.00
S ½ of s w ¼	9	54	21	80.00
N e ¼ of s e ¼	9	54	21	40.00
Balance sec 9 swamp.				
S w ¼ of s w ¼	11	54	21	40.00
Balance sec 11 swamp.				
Sec 13 all swamp.				
N ½ of n e ¼	15	54	21	80.00
S ½ of n w ¼	15	54	21	80.00
N w ¼ of s w ¼	15	54	21	40.00
693 Balance sec 15 swamp.				
Lot No. 1	17	54	21	.11
Lot No. 2	17	54	21	21.45
S w ¼ of n w ¼	17	54	21	40.00
N e ¼ of n w ¼	17	54	21	40.00
E ½ of n e ¼	17	54	21	80.00
N w ¼ of n e ¼	17	54	21	40.00
Balance sec 17 swamp.				
N w ¼ of n e ¼	19	54	21	40.00
N e ¼ of n w ¼	19	54	21	40.00
S e ¼ of s w ¼	19	54	21	40.00
Lot No. 3	19	54	21	41.27
" 4	19	54	21	41.42
Balance sec 19 swamp.				
N e ¼	21	54	21	160.00
S e ¼	21	54	21	160.00
S w ¼	21	54	21	160.00
S ½ of n w ¼	21	54	21	80.00
N w ¼ of n w ¼	21	54	21	40.00
N e ¼ of n w ¼ swamp.				
Sections 23 and 25 all swamp.				
N w ¼	27	54	21	160.00
S w ¼	27	54	21	160.00
N ½ s e ¼	27	54	21	80.00
S ½ n e ¼	27	54	21	80.00
Balance sec 27 swamp.				
E ½ of s e ¼	29	54	21	80.00
Balance sec 29 swamp.				

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
Lot No. 1	31	54	21	40.44
Lot No. 2	31	54	21	40.31
694 Lot No. 3	31	54	21	40.19
N e ¼	31	54	21	160.00
S e ¼	31	54	21	160.00
E ½ of n w ¼	31	54	21	80.00
E ½ of s w ¼	31	54	21	80.00
Lot No. 4 swamp.				
N w ¼	33	54	21	160.00
N ½ of n e ¼	33	54	21	80.00
S w ¼ of n e ¼	33	54	21	40.00
S ½ of s e ¼	33	54	21	80.00
N ½ of s w ¼	33	54	21	80.00
S w ¼ of s w ¼	33	54	21	40.00
Balance sec 33 swamp.				
S w ¼	35	54	21	160.00
S ½ of n e ¼	35	54	21	80.00
E ½ of s w ¼	35	54	21	80.00
S w ¼ of s w ¼	35	54	21	40.00
Balance sec 35 swamp.				
Lot No. 1	1	54	22	39.93
" 2	1	54	22	39.79
" 3	1	54	22	39.65
" 4	1	54	22	39.50
S ½ of n w ¼	1	54	22	80.00
S ½ of n e ¼	1	54	22	80.00
S w ¼	1	54	22	160.00
S e ¼	1	54	22	160.00
Lot No. 1	3	54	22	42.77
" 2	3	54	22	41.91
" 3	3	54	22	40.05
Lot No. 4	3	54	22	40.19
695 S ½ of n w ¼	3	54	22	80.00
S ½ of n e ¼	3	54	22	80.00
S e ¼	3	54	22	160.00
E ½ of s w ¼	3	54	22	80.00
W ½ s w ¼ swamp.				
Lot No. 1	5	54	22	39.29
" 2	5	54	22	39.87
" 3	5	54	22	40.45
" 4	5	54	22	41.04
S ½ of n w ¼	5	54	22	80.00
S ½ n e ¼	5	54	22	80.00
S w ¼	5	54	22	160.00
E ½ of s e ¼	5	54	22	80.00
See note 1.				
Lot No. 1	7	54	22	43.88

EXHIBIT 13.

	Description.	Section.	Township.	Range.	No. acres.
	Lot No. 2	7	54	22	43.03
	" 3	7	54	22	42.18
	S e ¼ of n w ¼	7	54	22	40.00
	S w ¼ of n e ¼	7	54	22	40.00
	N e ¼ of s w ¼	7	54	22	40.00
	See notes 2, 3, and 4.				
	N w ¼	9	54	22	160.00
	S e ¼	9	54	22	160.00
	See notes 5, 6, and 7.				
	All of section	11	54	22	640.00
	N w ¼ of	13	54	22	160.00
	S e ¼	13	54	22	160.00
	E ½ of s w ¼	13	54	22	80.00
	E ½ of n e ¼	13	54	22	80.00
	S w ¼ of n e ¼	13	54	22	40.00
696	Balance sec 13 swamp.				
	All of	15	54	22	640.00
	S w ¼	17	54	22	160.00
	W ½ of n w ¼	17	54	22	80.00
	S ½ of s e ¼	17	54	22	80.00
	See notes 8, 9, and 10.				
	Lot No. 1	19	54	22	41.51
	" 2	19	54	22	41.54
	" 3	19	54	22	41.57
	" 4	19	54	22	41.59
	E ½ of n w ¼	19	54	22	80.00
	E ½ of s w ¼	19	54	22	80.00
	W ½ of n e ¼	19	54	22	80.00
	N e ¼ of n e ¼	19	54	22	40.00
	S e ¼	19	54	22	160.00
	S e ¼ of n e ¼ sec 19 swamp.				
	N ½	21	54	22	320.00
	S w ¼	21	54	22	160.00
	W ½ of s e ¼	21	54	22	80.00
	N e ¼ of s e ¼	21	54	22	40.00
	S e ¼ of s e ¼ swamp.				
	N e ¼	23	54	22	160.00
	N ½ of s w ¼	23	54	22	80.00
	N w ¼ of s e ¼	23	54	22	40.00
	S e ¼ of s e ¼	23	54	22	40.00
	Balance sec 23 swamp.				
	S ½ of n e ¼	25	54	22	80.00
	N e ¼ of n e ¼	25	54	22	40.00
	E ½ of n w ¼	25	54	22	80.00
	S w ¼	25	54	22	160.00
697	N w ¼ of s e ¼	25	54	22	40.00
	Balance sec 25 swamp.				

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
N e ¼	27	54	22	160.00
S e ¼ of n w ¼	27	54	22	40.00
N e ¼ of s w ¼	27	54	22	40.00
E ½ of s e ¼	27	54	22	80.00
N w ¼ of s e ¼	27	54	22	40.00
Balance sec 27 swamp.				
N ½	29	54	22	320.00
S w ¼	29	54	22	160.00
N ½ of s e ¼	29	54	22	80.00
S w ¼ of s e ¼	29	54	22	40.00
S e ¼ of s e ¼ swamp.				
Lot No. 3	31	54	22	40.30
" 4	31	54	22	40.10
N ½ of n e ¼	31	54	22	80.00
N e ¼ of n w ¼	31	54	22	40.00
Balance sec 31 swamp.				
N ½ of n e ¼	33	54	22	80.00
S w ¼ of n e ¼	33	54	22	40.00
E ½ of s w ¼	33	54	22	80.00
N w ¼ of s e ¼	33	54	22	40.00
Balance sec 33 swamp.				
N w ¼ of n w ¼	35	54	22	40.00
S w ¼ of s w ¼	35	54	22	40.00
S e ¼ of s e ¼	35	54	22	40.00
Balance sec 35 swamp.				
Lot No. 1	1	54	23	39.31
" 2	1	54	23	39.44
Lot No. 3	1	54	23	39.07
698 Lot No. 4	1	54	23	38.70
S ½ of n w ¼	1	54	23	80.00
S ½ of n e ¼	1	54	23	80.00
S ½	1	54	23	320.00
Lot No. 1	3	54	23	33.91
S ½ of n e ¼	3	54	23	80.00
S e ¼	3	54	23	160.00
Balance sec 3 swamp.				
Lot No. 1	5	54	23	34.36
" 2	5	54	23	24.51
" 3	5	54	23	33.16
" 4	5	54	23	35.81
" 5	5	54	23	54.65
" 6	5	54	23	18.75
" 7	5	54	23	29.25
" 8	5	54	23	47.75
" 9	5	54	23	32.00
" 10	5	54	23	42.25
S ½ of n w ¼	5	54	23	80.00

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
S w ¼	5	54	23	160.00
E ½	7	54	23	320.00
Balance sec 7 swamp.				
Lot No. 1	9	54	23	39.25
" 2	9	54	23	2.00
" 3	9	54	23	24.00
" 4	9	54	23	14.75
" 5	9	54	23	33.75
E ½ of n w ¼	9	54	23	80.00
N w ¼ n w ¼	9	54	23	40.00
N ½ of n e ¼	9	54	23	80.00
699 S w — of n e ¼	9	54	23	40.00
E ½ of s w ¼	9	54	23	80.00
S e ¼	9	54	23	160.00
S e ¼ of n e ¼ sec 9 swamp.				
E ½	11	54	23	320.00
S w ¼	11	54	23	160.00
S ½ of n w ¼	11	54	23	80.00
N e ¼ of n w ¼	11	54	23	40.00
N w ¼ of n w ¼ swamp.				
S w ¼	13	54	23	160.00
S e ¼	13	54	23	160.00
W ½ of n e ¼	13	54	23	80.00
S e ¼ of n e ¼	13	54	23	40.00
N w ¼	13	54	23	160.00
See note No. 11.				
S ½ of n e ¼	15	54	23	80.00
S e ¼ of n w ¼	15	54	23	40.00
N w ¼ of n w ¼	15	54	23	40.00
N ½ of s w ¼	15	54	23	80.00
S w ¼ of s w ¼	15	54	23	40.00
N ½ of s e ¼	15	54	23	80.00
Balance sec 15 swamp.				
N ½	17	54	23	320.00
S w ¼	17	54	23	160.00
N ½ of s w ¼	17	54	23	80.00
S ½ of s w ¼ swamp.				
Lot No. 1	19	54	23	41.74
" 2	19	54	23	41.70
" 3	19	54	23	41.66
Lot No. 4	19	54	23	41.62
700 E ½ of n w ¼	19	54	23	80.00
N e ¼ of s w ¼	19	54	23	40.00
S w ¼ of n e ¼	19	54	23	40.00
S e ¼	19	54	23	160.00
N ½ and s w ¼ of n e ¼ swamp.				
See note No. 12.				

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
Lot No. 2	21	54	23	45.50
" 3	21	54	23	23.50
" 4	21	54	23	47.25
" 5	21	54	23	52.75
" 6	21	54	23	29.50
" 7	21	54	23	39.95
" 8	21	54	23	31.00
" 9	21	54	23	10.00
" 10	21	54	23	41.25
" 11	21	54	23	19.25
" 12	21	54	23	3.50
S ½ of n e ¼	21	54	23	80.00
S e ¼ of s e ¼	21	54	23	40.00
Balance sec 21 swamp.				
S ½	23	54	23	320.00
N e ¼ of n e ¼	23	54	23	40.00
Balance sec 23 swamp.				
S ½	25	54	23	320.00
N w ¼	25	54	23	160.00
S ½ of n e ¼	25	54	23	80.00
N w ¼ of n e ¼	25	54	23	40.00
N e ¼ of n e ¼ swamp.				
N e ¼ of n e ¼	27	54	23	40.00
N w ¼ of n w ¼	27	54	23	40.00
Balance sec 27 swamp.				
701 N ½	29	54	23	340.00
S e ¼	29	54	23	160.00
N ½ of s w ¼	29	54	23	80.00
S ½ of s e ¼ sec 29 swamp.				
Lot No. 2	31	54	23	40.87
" 3	31	54	23	40.52
" 4	31	54	23	40.17
S e ¼ of n w ¼	31	54	23	40.00
E ½ of s w ¼	31	54	23	80.00
S e ¼	31	54	23	160.00
S w ¼ of n e ¼	31	54	23	40.00
N ½ of n e ¼ and n ½ of n w ¼ swamp. See note No. 13.				
Lot No. 1	33	54	23	50.00
" 2	33	54	23	26.25
" 3	33	54	23	33.50
" 6	33	54	23	32.00
" 7	33	54	23	25.50
N w ¼	33	54	23	160.00
N ½ of s w ¼	33	54	23	80.00
Balance sec 33 swamp.				
S ½ of n w ¼	35	54	23	80.00

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	S ½ of n e ¼	35	54	23	80.00
	N ½ of s e ¼	35	54	23	80.00
	S e ¼ of s e ¼	35	54	23	40.00
	E ½ of s w ¼	35	54	23	80.00
	N ½ of n w ¼ and n ½ of n e ¼ and sw ¼ of s e ¼ swamp. See note No. 14. Township 55, range 17, not surveyed.				
702	Lot No. 4	19	55	18	35.17
	Balance of sec 19 and secs 21, 23, 25, 27, and 29 all swamp.				
	Lot No. 1	31	55	18	34.42
	" 2	31	55	18	34.87
	" 3	31	55	18	35.32
	" 4	31	55	18	35.77
	E ½ of s w ¼	31	55	18	80.00
	S w ¼ of s e ¼	31	55	18	40.00
	Balance of sec 31 and secs 33 and 35 all swamp. All of sec 13, 55, 19, in limit swamp (160 acres).				
	Lot No. 6	15	55	19	35.25
	" 8	15	55	19	12.70
	" 9	15	55	19	40.45
	" 10	15	55	19	31.00
	" 11	15	55	19	43.50
	S w ¼ of s w ¼	15	55	19	40.00
	Balance sec 15 in limit swamp and river.				
	S w ¼ of n e ¼	17	55	19	40.00
	S e ¼ of n w ¼	17	55	19	40.00
	S w ¼	17	55	19	160.00
	N ½ of s e ¼	17	55	19	80.00
	S e ¼ of s e ¼	17	55	19	40.00
	Balance sec 17 in limit swamp.				
	Lot No. 1	19	55	19	32.31
	" 2	19	55	19	32.53
	" 3	19	55	19	32.75
	" 4	19	55	19	32.97
	E ½ of s w ¼	19	55	19	80.00
	E ½ of n w ¼	19	55	19	80.00
	N ½ of n e ¼	19	55	19	80.00
703	S w ¼ of n e ¼	19	55	19	40.00
	W ½ of s e ¼	19	55	19	80.00
	S e ¼ of s e ¼	19	55	19	40.00
	Lot No. 3	21	55	19	33.00

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
Lot No. 4	21	55	19	26.85
" 8	21	55	19	25.75
" 9	21	55	19	45.25
" 10	21	55	19	19.25
" 11	21	55	19	23.50
S e ¼ of n e ¼	21	55	19	40.00
S e ¼	21	55	19	160.00
Lots Nos. 1, 2, and 7, sec 21, swamp. See note No. 15.				
S ½ of n w ¼	23	55	19	80.00
N w ¼ of n e ¼	23	55	19	40.00
Balance of sec 23 swamp.				
All of	25	55	19	640.00
N w ¼	27	55	19	160.00
N ½ of s w ¼	27	55	19	80.00
N e ¼ of s w ¼	27	55	19	40.00
W ½ of n e ¼	27	55	19	80.00
E ½ of s e ¼	27	55	19	80.00
S w ¼ of s e ¼	27	55	19	40.00
Balance sec 27 swamp.				
Lot No. 1	29	55	19	37.75
" 2	29	55	19	18.50
" 3	29	55	19	34.00
" 4	29	55	19	16.75
" 5	29	55	19	33.75
Lot No. 6	29	55	19	.30
704 " 7	29	55	19	38.75
" 8	29	55	19	17.50
Lot No. 9	29	55	19	51.15
N e ¼ of n w ¼	29	55	19	40.00
W ½ of n w ¼	29	55	19	80.00
N w ¼ of s w ¼	29	55	19	40.00
S e ¼	29	55	19	160.00
S e ¼ of n e ¼	29	55	19	40.00
Lot No. 1	31	55	19	35.18
" 2	31	55	19	35.55
" 3	31	55	19	52.92
" 4	31	55	19	50.44
" 5	31	55	19	22.50
" 6	31	55	19	19.75
" 7	31	55	19	47.25
" 8	31	55	19	31.00
" 9	31	55	19	38.75
" 10	31	55	19	32.00
N e ¼ of n w ¼	31	55	19	40.00
S e ¼	31	55	19	160.00
S e ¼ of n e ¼	31	55	19	40.00

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	All of	33	55	19	640.00
	N w ¼ of	35	55	19	160.00
	N ½ of n e ¼	35	55	19	80.00
	Balance of sec 35 swamp.				
	S ½	13	55	20	320.00
	S ½ of n e ¼	13	55	20	80.00
	S ½ of n w ¼	13	55	20	80.00
	Balance of sec 13 out of limit.				
	S e ¼	15	55	20	160.00
705	S ½ of n e ¼	15	55	20	80.00
	Balance of sec 15 in limit swamp.				
	Secs 19 and 21 all swamp.				
	N ½ of	23	55	20	320.00
	N e ¼ of s w ¼	23	55	20	40.00
	N w ¼ of s e ¼	23	55	20	40.00
	Balance of sec 23 swamp.				
	All of secs 25, 27, 29, 31, 33, and 35 swamp.				
	All of secs 13 and 15, 55, 21, in limit, swamp.				
	Lot No. 1	17	55	21	29.50
	W ½ of s e ¼	17	55	21	80.00
	N e ¼ of s e ¼	17	55	21	40.00
	N w ¼	17	55	21	160.00
	Balance of sec 17 north of limit.				
	Lot No. 1	19	55	21	37.90
	" 2	19	55	21	32.50
	" 3	19	55	21	37.00
	" 4	19	55	21	19.25
	" 5	19	55	21	36.55
	" 6	19	55	21	37.29
	" 7	19	55	21	38.03
	" 8	19	55	21	38.77
	W ½ of s w ¼	19	55	21	80.00
	S e ¼	19	55	21	160.00
	S e ¼ of n e ¼	19	55	21	40.00
	Lot No. 3	21	55	21	28.65
	" 4	21	55	21	37.50
	" 5	21	55	21	33.75
	" 6	21	55	21	.30
	S w ¼ of n w ¼	21	55	21	40.00
706	E ½ of s w ¼	21	55	21	80.00
	N e ¼ of s e ¼	21	55	21	40.00
	Balance sec 21 swamp.				
	Sections 23, 25, and 27, 55, 21, all swamp.				

EXHIBIT 13.

Description.	Section.	Township.	Range.	No. acres.
Lot No. 1	29	55	21	50.25
" 2	29	55	21	11.00
" 3	29	55	21	49.30
" 4	29	55	21	31.25
" 5	29	55	21	34.90
" 6	29	55	21	20.50
" 7	29	55	21	21.00
S w ¼ of n w ¼	29	55	21	40.00
S w ¼	29	55	21	160.00
W ½ of s e ¼	29	55	21	80.00
S e ¼ of s e ¼	29	55	21	40.00
Balance of sec 29 in lakes.				
N w ¼ of n e ¼	31	55	21	40.00
N e ¼ of n w ¼	31	55	21	40.00
S e ¼ of s w ¼	31	55	21	40.00
Balance sec 31 swamp.				
Lot No. 1	33	55	21	33.50
" 4	33	55	21	35.75
" 5	33	55	21	28.50
" 6	33	55	21	22.50
S ½ of s w ¼	33	55	21	80.00
Balance sec 33 swamp.				
All of sec 35 swamp.				
S ½ of n e ¼	13	55	22	80.00
S ½ of n w ¼	13	55	22	80.00
Balance sec 13 north of limit.				
707 Secs 15 and 17 all north of limit.				
N ½ sec 19, 55, 22 north of limit.				
See notes Nos. 16, 17, and 18.				
S ½	21	55	22	320.00
S ½ of n e ¼	21	55	22	80.00
S ½ of n w ¼	21	55	22	80.00
Balance of sec 21 north of limit.				
W ½ of	23	55	22	320.00
W ½ of n e ¼	23	55	22	80.00
S e ¼ of n e ¼	23	55	22	40.00
N ½ of s e ¼	23	55	22	80.00
Lot No. 1	23	55	22	34.60
" 2	23	55	22	40.00
Lot No. 1	25	55	22	39.60
" 2	25	55	22	23.60
" 3	25	55	22	25.20
" 4	25	55	22	25.95
S ½ of n e ¼	25	55	22	80.00
S ½ of n w ¼	25	55	22	80.00

Exhibit 13—Continued.

	Description.	Section.	Township.	Range.	No. acres.
	S w ¼	25	55	22	160.00
	W ½ of s e ¼	25	55	22	80.00
	N e ¼ of s e ¼	25	55	22	40.00
	S e ¼ of s e ¼ sec 25 swamp.				
	All of	27	55	22	640.00
	S ½	29	55	22	320.00
	E ½ of n e ¼	29	55	22	80.00
	N w ¼ of n e ¼	29	55	22	40.00
	S w ¼ of n w ¼	29	55	22	40.00
	See note No. 19.				
	Lot No. 1	31	55	22	44.12
708	Lot No. 2	31	55	22	44.37
	" 3	31	55	22	44.62
	Lot No. 4	31	55	22	44.87
	E ½ of n w ¼	31	55	22	80.00
	E ½ of s w ¼	31	55	22	80.00
	E ½	31	55	22	320.00
	All of	33	55	22	640.00
	W ½ of	35	55	22	320.00
	S e ¼	35	55	22	160.00
	W ½ of n e ¼	35	55	22	80.00
	S e ¼ of n e ¼	35	55	22	40.00
	N e ¼ of n e ¼ swamp.				
	E ½	25	55	23	320.00
	E ½ of n w ¼	25	55	23	80.00
	E ½ of s w ¼	25	55	23	80.00
	S w ¼ of s w ¼	25	55	23	40.00
	Balance sec 25 swamp.				
	W ½ of n e ¼	27	55	23	80.00
	N ½ of s e ¼	27	55	23	80.00
	E ½ of s w ¼	27	55	23	80.00
	S w ¼ of s w ¼	27	55	23	40.00
	S e ¼ of n w ¼	27	55	23	40.00
	Balance sec 27 swamp and out of limit.				
	S ½ of s e ¼	29	55	23	80.00
	Balance sec 29 swamp and out of limit.				
	Lot No. 1	31	55	23	5.75
	" 7	31	55	23	22.50
	" 8	31	55	23	28.75
	" 9	31	55	23	13.00
	Lot No. 10	31	55	23	19.75
709	" 11	31	55	23	17.50
	N ½ of n e ¼	31	55	23	80.00
	E ½ of s w ¼	31	55	23	80.00
	S e ¼	31	55	23	160.00

Exhibit 13—Continued.

Description.	Section.	Township.	Range.	No. acres.
Balance sec 31 swamp.				
N ½ of	33	55	23	320.00
N ½ of s e ¼	33	55	23	80.00
S w ¼ of s e ¼	33	55	23	40.00
N ½ of s w ¼	33	55	23	80.00
S e ¼ of s w ¼	33	55	23	40.00
Balance sec 33 swamp.				
S ½ of n e ¼	35	55	23	80.00
N w ¼ of n e ¼	35	55	23	40.00
S ½ of n w ¼	35	55	23	80.00
S ½ of	35	55	23	320.00
Total				50,995.21

UNITED STATES LAND OFFICE,
DULUTH, MINN., *Sept.* 3*d*, 1877.

We hereby certify that the foregoing list is a true and correct statement of all the lands subject to selection by the Northern Pacific Railroad Co. in this U. S. land district within the forty-mile limits of the grant to said company, as appears by the records of this office.

R. C. MITCHELL, *Register.*
T. H. PRESSNELL, *Receiver.*

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EXHIBIT 14.

UNITED STATES LAND OFFICE,
TAYLOR'S FALLS, MINN., *Sept.* 5, 1877.

We hereby certify that there is within the 30 and 40 mile limits of the congressional grant of lands to the Northern Pacific Railroad Company on odd-numbered sections in this district 11,901.75 acres, all of which land was free from encumbrance or reservation of any character whatever at the time said grant attached.

J. P. OWENS, *Register.*
GEO. B. FOLSOM, *Receiver.*

EXHIBIT 15.

Township 128, range 32:
W. ½ n. w. ¼ and w. ½ s. w. ¼ of sec. 19.
Township 127, range 32:
S. e. ¼ s. w. ¼ of sec. 19, lots 1 and 2 of sec. 31.
Township 127, range 33:
N. ½, e. ½ s. w. ¼, and s. e. ¼ of sec. 1; n. ½ n. e. ¼, s. ½ s. e ¼, and lot 3 of sec. 3; s. w. ¼ n. w. ¼ of sec. 7, s. ½ n. e. ¼ of sec. 9, n. e. ¼ s. e. ¼ of sec. 19, n. w. ¼ s. w. ¼ of sec. 21; s. e. ¼ s. w. ¼, lots 3, 4, and 6, of sec. 25; lot 1 of sec. 35.

Township 128, range 33:

N. w. ¼ of sec. 1, w. ½ n. w. ¼ of sec. 7; s. w. ¼ s. w. ¼ and s. w. ¼ s. e. ¼ of sec. 9, s. w. ¼ n. e. ¼ of sec. 17, n. ½ n. e. ¼ of sec.
711 23; e. ½, n. w. ¼ n. w. ¼, and s. ½ s. w. ¼ of sec. 25; lot 2 and e. ½ s. w. ¼ of sec. 27, s. e. ¼ n. e. ¼ of sec. 33; e. ½ n. e. ¼, n. w. ¼ n. e. ¼, s. ½ s. w. ¼, s. w. ¼ s. e. ¼, and e. ½ s. e. ¼ of sec. 35.

Township 129, range 33:

Lot 5 of sec. 29.

Township 127, range 34:

S. e. ¼ s. e. ¼ of sec. 5, lot 2 of sec. 11.

Township 128, range 34:

W ½ n. w. ¼ of sec. 15.

Township 129, range 34:

Lots 3, 4, and 5 of sec. 25; s. e. ¼ n. e. ¼, n. w. ¼ n. e. ¼, and lots 1 and 2 of sec. 27, s. e. ¼ n. w. ¼ of sec. 31, n. ½ n. w. ¼ of sec. 33, s. e. ¼ s. e. ¼ of sec. 35.

Township 127, range 35:

Lot 2 of sec. 1, s. w. ¼ n. w. ¼ of sec. 15.

Township 128, range 35:

Lot 3 of sec. 11.

Township 129, range 35:

W. ½ n. w. ¼ of sec. 25, n. w. ¼ s. w. ¼ of sec. 31.

Township 128, range 36:

Lot 3 of sec. 3, lot 1 and s. e. ¼ n. e. ¼ of sec. 9.

Township 129, range 36:

W. ½ n. w. ¼ and w. ½ s. w. ¼ of sec. 25, n. w. ¼ n. w. ¼ of sec. 27, n. e. ¼ n. e. ¼ and n. e. ¼ n. w. ¼ of sec. 33, e. ½ s. w. ¼ of sec. 35.

Township 129, range 37:

Lot 1 of sec. 29.

712 EXHIBIT 16.

Lithographic copy of Jewett's new sectional map of Minnesota, upon which is indicated by green coloring the lands in controversy in this action.

EXHIBIT 17.

Sectional map of the surveyed portion of Minnesota and the northwestern part of Wisconsin, showing the relative locations of the line of the St. Vincent Branch and the line of Shepard's survey of 1869, as indicated on Exhibit 7, and the definite line of the Northern Pacific railroad as constructed.

EXHIBIT 18.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 12, 1874.

Register and receiver, Detroit, Minn.

GENTLEMEN: I transmit herewith a copy of the decision of the Honorable Secretary of the Interior, dated March 27, 1874, overruling the application of the Northern Pacific Railroad Company

for a review of the decision of the Department of May 13, 1873, in relation to the lands in controversy between that company and the "St. Vincent Extension," St. Paul and Pacific Railroad Company.

713 You are therefore directed to allow and certify to the selections made by the said St. Paul & Pacific Company in your district within the late contested limits and forward the same to this office.

Very respectfully, W. W. CURTIS,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *27th March*, 1874.

SIR: I transmit herewith the application of the attorneys of the Northern Pacific Railroad Company for a review of my decision of 13th May last in relation to the lands in controversy between that company and the St. Paul & Pacific Railroad Company.

The application is overruled, and you will be pleased to so inform the parties in interest.

The papers filed on the application are herewith transmitted for your files.

I am, sir, very respectfully, your ob't servant,
C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r Gen. Land Office.

U. S. LAND OFFICE,
DETROIT, MINN., *Aug.* 23, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.
THOS. C. SHAPLEIGH, *Register.*

714 EXHIBIT 19.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 7th*, 1873.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: I transmit herewith a copy of the decision of the Hon. Secretary of the Interior, dated the 22d ult.; also a copy of the opinion of the Hon. Walter H. Smith, Assistant Attorney General, relative to the rights of the Northern Pacific R. R. Co. under the 6th section of the act organizing said company, approved July 2d, 1864 (Stat. 13, p. 365).

The Secretary concurs in the opinion of the Assistant Attorney General that said section operates as a withdrawal of the lands within the limits of the grant, both surveyed and unsurveyed, from the date of the acceptance of the map of general route by the Department, and directs the cancellation of all entries or locations made subsequent to that time if shown to be still within the grant after the definite location of the road.

The map of general route through Minnesota was filed and accepted by the Department August 13, 1870, upon which a withdrawal of the odd sections within twenty miles of the line in your district was ordered by letter from this office dated Sept. 15, 1870. The company subsequently filed an amended map of general route through Minnesota, which was accepted by the Department October 12, 1870, and the withdrawal was amended to conform thereto by instructions from this office dated November 7th, 1870.

715 The road is now definitely located in Minnesota, and in accordance with the above-mentioned decision I have this day canceled the following entries and filings made in your district, which are shown by the records of this office to come under said ruling and not yet patented, to wit:

Cash entry No. 118, by John Lisk, dated November 8th, 1872, for lot 1, sec. 3, and s. ½ n. w. ¼ and lot 4, sec. 2, t'p 137, r. 40, based on D. S. No. 1129 (Alexandria series), dated Sept. 24, 1870, and March 26, 1872. The entry will be allowed to stand for that portion contained in the even section if the party's residence and improvements are upon that tract, unless he desires the entire entry canceled.

Cash entry No. 81, by Henry Henderson, for the s. e. ¼ n. e. ¼ and lots 3, 5, and 6, sec. 13, 145, 49, dated Aug. 27, 1872, based on D. S. 533, dated June 13, 1871, and Aug. 2, 1872.

Cash entry No. 145, Francis Myers, for lots 1, 2, 3, 6, and 7, sec. 1, t'p 137, r. 40, and lots 5 and 6, sec. 6, t'p 137, r. 39, dated Dec. 28, 1872, based on D. S. No. 566, dated Sept. 15, 1870, and Aug. 19, 1872. The entry will be allowed to stand for lots 5 and 6, sec. 6, t'p 137, r. 39, if the party's residence and improvements are upon that tract, unless he desires otherwise.

Cash entry No. 159, Walter Gorman, for s. w. ¼ n. e. ¼, s. e. ¼ n. w. ¼, and lots 3, 4, and 5, sec. 18, and lot 9, sec. 7, t'p 137, r. 39, based on D. S. No. 214, dated Sept. 18, 1870, and June 21, 1872. This entry is canceled only for lot 9 of sec. 7, said township and range.

You will notify the above parties of the cancellation of their entries or that portion of them conflicting with the railroad grant, to make application for the return of their purchase-money.

716 A. C. scrip No. 520, Va. R. and R., No. 20, Jacob Anderson, dated July 23, 1872, for p't n. w. ¼, sec. 13, t'p 139, r. 42, based on D. S. No. 1065 (Alexandria series), dated Sept. 1, 1870, Feb. 12, 1872.

A. C. scrip No. 523, Va. R. and R., 23, by Freeman K. Small, July 26, 1872, e. ½ n. e. ¼, 21, and w. ½ n. w. ¼, 22, t'p 139, r. 42, based on D. S. 1017 (Alexandria series), dated Sept. 17, 1870, and Jan. 29, 1872.

A. C. scrip No. 524, Va. R. and R., 24, by Moody Cook, Aug. 29, 1870, n. ½ s. w. ¼ and s. ½ n. w. ¼, sec. 1, t'p 139, r. 42, based on D. S. No. 1025 (Alexandria series), dated Aug. 29, 1870, and Jan. 29, 1872.

A. C. scrip No. 584, Va. R. & R., 34, Nels. R. Hage, August 27, 1872, lot 6 and n. e. ¼ s. e ¼, sec. 1, t'p 145, r. 49, and lots 6 and 7,

s. e. ¼ s. w. ¼, sec. 6, t'p 145, r. 48, based on D. S. 538 (Alexandria series), dated June 15, 1871, and August 2, 1872.

A. C. scrip No. 1564, Ga. R. & R., 81, James Winram, July 13, 1873, on w. ½ s. w. ¼, 14, and e. ½ s. e. ¼, 15, t'p 138, r. 40, based on D. S. No. 1008 (Alexandria series), dated August 23, 1870, and January 27, 1872.

The scrip is herewith returned for delivery to the parties, with certificates attached, allowing relocations without payment of additional fees.

Homestead entry No. 89, for lot 1, sec. 25, t'p 145, r. 49, by Gustave A. Oberg, dated August 20, 1872.

Homestead entry No. 90, by Henry Hawkins, August 20, 1872, for the w. ½ n. e. ¼, s. e. ¼ n. w. ¼, lot 1, sec. 31, t'p 145, r. 48.

Homestead entry No. 92, by Alfred Holloway, August 23, 1872, for the n. e. ¼, sec. 29, t'p 144, r. 46.

717 Homestead entry No. 102, by Rasmus R. Hage, August 28, 1872, for the w. ½ s. w. ¼, sec. 7, t'p 145, r. 48.

You will note these cancellations on your records, and where the entire entry is cancelled allow the party to make a new entry without payment of additional fees or commissions.

Warrant location R. & R. No. 12, w't No. 74955, act of 1850, on the n. e. ¼ s. w. ¼, sec. 7, t'p 140, r. 48, by Elisha C. Sprague, Sept. 2, 1870.

The warrant is herewith returned, with a certificate attached, allowing the party to relocate it without payment of additional fees.

Declaratory Statements.

D. S. 298, June 10, 1871, and June 24, 1872, Andrew Larson, s. w. ¼, 23, 141, 44.

D. S. 388, Sept. 4, 1870, and July 2, 1872, Ole Monson, n. ½ n. e. ¼, 25, 138, 42.

D. S. 428, August 20, 1870, and July 8, 1872, Halvor Halvorson, n. ½ n. e. ¼, 27, 139, 44.

D. S. 444, June 25, 1870, and July 10, 1872, Peter O. Voler, n. w. ¼ n. w. ¼, 13, 143, 44.

D. S. 525, June 3, 1871, and August 2, 1872, Engle Severtson, e. ½ n. w. ¼, s. w. ¼ n. e. ¼, and lots 1 and 2, sec. 7, 145, 48.

D. S. 526, July 3, 1871, and August 2, 1872, Andrew O. Paulson, e. ½ s. e. ¼, 3, 145, 48.

D. S. 527, July 3, 1871, and August 2, 1872, Annie Knudson, n. w. ¼, 13, 145, 48.

D. S. 529, July 1, 1871, and August 2, 1872, John Grutle, n. e. ¼ s. w. ¼, s. e. ¼ n. w. ¼, s. w. ¼ n. e. ¼, n. w. ¼ s. e. ¼, 3, 145, 48.

D. S. 530, July 3, 1871, and August 2, 1872, Louis S. Huske, w. ½ n. w. ¼, 19, 145, 48.

718 D. S. 532, June 16, 1871, and August 2, 1872, Albert O. Savume, s. e. ¼ n. e ¼, 1, 145, 48.

D. S. 534, July 3, 1871, and August 2, 1872, Ole Halsted, s. e. ¼, 11, 145, 48.

D. S. 535, July 3, 1871, and August 2, 1872, Ole J. Paulson, n. e. ¼, 11, 145, 48.

D. S. 537, October 1, 1871, and August 2, 1872, Jacob Hasby, lots 1 and 2, 1, 145, 49.

D. S. 539, August 30, 1871, and August 3, 1872, Betsey Johnson, e. ½ n. e. ¼, 3, 145, 48.

D. S. 549, June 1, 1871, and August 10, 1872, Casemere Trouble, lots 7 and 8, 13, 145, 49.

D. S. 570, July 1, 1871, and August 21, 1872, Ole Hanson, n. w. ¼, 35, 144, 44.

D. S. 571, May 28, 1872, and August 21, 1872, Edward Dean, w. ½ n. w. ¼, 13, 144, 46.

D. S. 572, July 18, 1872, and August 21, 1872, W. C. Darling, n. w. ¼, 27, 144, 46.

D. S. 573, July 18, 1872, and August 21, 1872, Samuel Darling, n. e. ¼, 27, 144, 46.

D. S. 586, Nov. 25, 1870, and August 24, 1872, Charles Holinberg, lots 3 and 4, 19, 145, 48.

D. S. 587, June 3, 1871, and August 26, 1872, Andrew Johnson, s. ½ s. e. ¼, 25, 144, 44.

D. S. 588, June 3, 1871, and August 26, 1872, Soren Burgeson, e. ½ n. e. ¼ and n. e. ¼ s. e. ¼, 35, 144, 44.

D. S. 589, June 3, 1871, and August 26, 1872, Gilbert Hogenson, w. ½ n. e. ¼ and n. w. ¼ s. e. ¼, 35, 144, 44.

D. S. 598, August 1, 1871, and Sept. 2, 1872, A. B. McDonald, e. ½ s. e. ¼ and lot 4, 31, 138, 42.

D. S. 612, June 25, 1871, and Sept. 14, 1872, Charles L. Gordon, n. ½ n. w. ¼ and s. w. ¼ n. w. ¼, 3, 145, 48.

719 D. S. 1037 (Alex. series), Sept. 20, 1870, and January 29, 1872, Herman Olesen Wegager, s. e. ¼ n. e. ¼, n. e. ¼ s. e. ¼, and lots 9 and 10 and 11 and 12, sec. 1, t'p 139, r. 43.

You will note these cancellations on your records and advise the parties of the fact.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

U. S. LAND OFFICE,
DETROIT, MINN., *Aug. 23rd*, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

EXHIBIT 20.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *22d March*, 1873.

SIR: I have considered the appeal of the Northern Pacific Railroad Company from your decision of 19th August last, touching their right to certain lands adversely claimed by settlers under the pre-emption and homestead laws and by purchasers and locators. I transmit herewith a copy of the opinion of the Hon. Walter H.

Smith, assistant attorney general, on the question involved in the cases.

720 While concurring in his opinion that the 6th section of the act organizing said company, approved 2d July, 1864 (13 Stat., 365), operated as a withdrawal of the lands within the limits of the grant, after fixing the general route of the road and the filing of the map thereof, &c., I am yet unwilling, in view of the order of withdrawal issued by Mr. Secretary Cox on the 13th of August, 1870, and which he expressly stated was to take effect from its receipt at the local office, to direct at this time these entries to be cancelled. They will therefore be suspended until the rights and equities of the parties have been fully considered, and the definite location of the road determined in each case whether the lands enure to the company. In event that they then be found so to enure, such entries will, of course, be cancelled. If, however, parties in interest should for any reason prefer cancellation now to such suspension, you will be governed by their wishes in the premises. The papers are herewith returned.

I am, very respectfully, your ob't servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen. Land Office.

U. S. LAND OFFICE,
DETROIT, MINN., *Aug. 23d*, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

721 EXHIBIT 21.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
WASHINGTON, D. C., *March 17th*, 1873.

SIR: I have examined the appeal of the Northern Pacific Railroad Company from the decision of the Commissioner of the General Land Office of August 19, 1872, relative to the application of said company to have canceled as illegal under the sixth section of the act of Congress of July 2, 1864 (13 Stat., 369), all entries and locations of odd sections of land allowed subsequent to the filing and acceptance of the map of the general route of the road within the limits of twenty miles in the States and forty miles in the Territories on each side of the line as designated on said map.

The sixth section of the act referred to is in the following words: "And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed and as fast as may be required by the construction of said railroad; and the odd-numbered sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, excepting by said company as provided in this act; but

the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the act amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are hereby, extended to all other lands on the line of
722 said road when surveyed, excepting those hereby granted to said company, and the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre, when offered for sale."

It is claimed on the part of the company that the legal effect of this section was to reserve from disposition, under the general laws of the United States, all odd-numbered sections within the limits of their grant along the general route, as shown by a map of the same filed by the company and accepted by the Secretary of the Interior Aug. 13th, 1870, and that all entries or locations made of lands within these limits subsequent to the filing and acceptance of such map should be cancelled and the lands held to satisfy the grant to the company made by the third section of the act.

The Commissioner, in his decision of August 19th, 1872, denied the prayer of the company for a cancellation of entries made subsequent to the approval of the map of general route and prior to the withdrawal of the lands by the Department on the grounds, first, that *bona fide* settlers who had continued to improve their claims on the faith of the Government withdrawal would be prejudiced thereby, and, second, on the ground that the particular clause of the section relied upon did not operate as a withdrawal of lands from market, but related to the tracts which, under the third section, should be found on definite location to belong to the company, and was intended to protect the unsurveyed as well as the surveyed odd sections, "as without said proviso it might have been questioned whether the company could claim any odd-numbered sections prior to survey."

723 From this decision appeal has been taken to the Department.

The only question presented by the appeal relates to the construction of the sixth section. If this section operated as a withdrawal, as claimed by the company, then, of course, all entries and locations made subsequent to the filing and approval of the map of general route are illegal and must be cancelled.

I am compelled to reject the construction given by the Commissioner and accept that insisted upon by the company, for the reason that the latter seems justified by the usual meaning and acceptance of the words, is consistent with the objects contemplated by the act, and is the only construction by which I can find any application or give any effect to the following clause of the section: "And the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided in this act." If it be said that the words "hereby granted" refer to the grant made by the third section, that such grant was for odd sections undisposed of at the date of definite location, and that these sections are the ones protected from sale, it

must be admitted that Congress took great care to protect, in explicit language in the sixth section, what was already perfectly protected by the third.

There can be no question whatever that definite location of the road and the filing of the map of such definite location with the Commissioner of the General Land Office will, under the third section alone, give the company a valid right to all odd sections not sold, &c., and to which the United States have full title found within
724 the limits of the grant to the road as so located, whether the same are surveyed or unsurveyed, and that any settlements made thereon subsequent to such definite location would be illegal and void.

If I understand the decision of the Commissioner correctly upon this point, he holds that without the insertion of the clause quoted above a question might have been raised as to the right of the company to any odd sections before survey, and that the object of the clause was to place unsurveyed land in the same class with surveyed lands under the grant.

In my opinion the use of the clause for this purpose was as unnecessary as it was for the purpose of protecting the odd sections after definite location. In relation to a grant of this character, made with direct reference to the construction of a road through unsurveyed land, it does not, in my opinion, make any difference whether the land is surveyed or unsurveyed at the date of definite location. The right of the company attaches to each class alike on definite location, and the survey thereafter is a mere ministerial act to ascertain and set apart the granted land.

What, then, was the necessity for this clause of the sixth section, and in what is it more than mere surplusage if it has not a broader meaning than the one suggested? The odd sections granted being by the third section itself protected after definite location, it follows that if any force or effect whatever is to be given to the clause in question in the construction of the act it must be held to extend protection to the odd sections prior to definite location. Congress must not be presumed to have done a needless and unnecessary thing, as it certainly would have done had it protected
725 rights by the sixth section, already fully and perfectly protected by the third. An act of Congress must be so construed as to give force and effect, if possible, to all of its parts, and no two parts must be construed to mean the same thing if a separate meaning can be assigned to each.

(Sedg. Const. and Stat. Law, p. 237–'8; Commonwealth *vs.* Alger, 7 Cush., 53, 59; McKay *vs.* Detroit Pl'k R'd Co., 2 Mich., 138; Ogden *vs.* Strong, U. S. Cir. Ct., N. Y., 2 Paine, 584; Dwarris on Stat., 568; 1 Black. Com., 189.)

So, in the case under consideration, that construction which would make this clause of the sixth section in its legal effect a mere repetition of the third must be rejected if any other reasonable construction can be found consistent with the objects of the act and the intention of Congress.

None other is suggested than the one contended for by the road,

and I am unable to discover any other. That one is reasonable, is according to the usual and accepted meaning of the words, is consistent with every other portion of the act and with the whole act, and is justified by the objects contemplated by Congress in making the grant.

"The President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed and as fast as may be required by the construction of said railroad, and the odd sections of land hereby granted shall not be liable to sale or entry or preemption before or after they are surveyed." "Shall not be liable to entry." From what date? Clearly not from the passage of the act, for then not even the approximate location of the road was de-
726 terminable not from the date of the definite location, as already shown, but evidently from the date of the approval of the map of the general route, the designation of which is provided for in immediate connection with the clause in question prior to the surveys directed to be made. It is argued with reason and force that the intention of Congress, in view of the difficulties that would inevitably be experienced in the construction of the road through a wild, uninhabited, and for the most part unsurveyed tract of country, intended to make a liberal and munificent grant of the public land to the company, and that it also intended to protect the grant so made from adverse disposition until the happening of the contingency upon which the rights of the company would vest.

The Northern Pacific, unlike the Union Pacific Company, received no pecuniary aid in bonds of the Government, and it is argued that this discrimination was intended to be offset by complete protection of the grant from outside appropriations until the line of the road could be definitely located. This view of the case is greatly strengthened by reference to the fact that no provision whatever is made in the act for the withdrawal of the land by executive order.

It is reasonable to suppose that Congress, in making this grant to aid the company in building a railroad and telegraph line through an uninhabited and comparatively unknown country, intended to leave the lands granted open to adverse settlement until such time as the line should be definitely fixed on the face of the earth; while in the case of the Union Pacific (to which also pecuniary aid was given) and the case of almost every road ever aided by a land
727 grant the Secretary of the Interior was expressly directed to withdraw the land granted upon designation of the general route. It is true that the power to order a withdrawal to protect the rights of the road was in the Secretary, independent of any special authorization, and that withdrawals under this act have actually been made; but suppose the Secretary had declined or omitted to make such withdrawals? Would there have been any protection whatever to the grant prior to definite location? Is it not reasonable to conclude that Congress, having omitted any special provision for executive withdrawal and in view of the contingency suggested, intended to have this clause construed according to the usual and

accepted meaning of its words, consistent with all other parts of the act and with the intention of the Legislature, and not as a mere repetition of what preceded it?

Upon a careful consideration of the whole question I am of the opinion that this section of the act prohibits the sale, entry, or pre-emption, either before or after survey, of all odd sections within the prescribed limits, as shown by the map of general route, from the date of the filing of said map and its acceptance by the Department, and that all entries or locations made within these limits subsequent to that date shonld be cancelled and the land held for the benefit of the road to wait the filing of the map of definite location.

I recommend that the decision of the Commissioner be reversed.

Very respectfully, W. H. SMITH,
Ass't Att'y General.

Hon. C. Delano, Secretary of the Interior.

728 U. S. LAND OFFICE,
DETROIT MINN., *Aug.* 23, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

EXHIBIT 22.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 24, 1873.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: The following-described tracts were selected in your district and approved by the Department the 12th instant as land falling within the ten-mile limits of the St. Paul and Pacific railroad, "St. Vincent Extension," and enuring under acts of March 3, 1857, March 3, 1865, July 13th, 1866, and March 3, 1871, to the State of Minnesota for said railroad:

E. ½ of sec. 7, t'p 142 n., r. 46 w., 320 acres.
All of sec. 9, t'p 142 n., r. 46 w., 640 acres.
W. ½ sec. 25, t'p 143 n., r. 47 w., 320 acres.
All of sec. 27, t'p 143 n., r. 47 w., 640 acres.

Please note the date of approval on your records and acknowledge the receipt of this letter.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

729 U. S. LAND OFFICE,
DETROIT, MINN., *Aug.* 23*d*, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

EXHIBIT 23.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July 9th*, 1873.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: Referring to your letter of the 13th ult. calling my attention to the Secretary's decision of 13th May last in the contest between the Northern Pacific R. R. Co. and the St. Vincent Extension of the St. Paul & Pacific R. R. Co., relative to the lands within the conflicting limits of the two roads, and asking the effect of said decision upon the entries and filings falling within said limits cancelled by my letter of 7th April last, I have to state that these lands were withdrawn by act of July 2d, 1864, along the entire line in Minnesota, from August 13th, 1870, without requiring any action on the part of this office, and from that date the lands were no longer subject to entry, no matter to which road the lands subsequently enured; therefore the decision of the Department of May 13th last does not affect the entries cancelled by my letter of 7th April last.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

730 U. S. LAND OFFICE,
DETROIT, MINN., *Aug. 23d*, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

EXHIBIT 24.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Nov.* 14, 1873.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: I am in receipt of two letters from receiver, dated 23d ultimo, asking instructions in regard to certifying to two lists of selections, ten and twenty mile limits, filed by the St. Paul and Pacific Railroad Co., St. Vincent Extension, and which are shown to have been already certified by you for the Northern Pacific R. R. Co. In reply I have to state that it will be proper for you to withhold your certificates for the present, as application is now pending before the Hon. Secretary of the Interior for a rehearing in the case of St. Paul and Pacific St. Vincent Extension *vs.* Northern Pacific Railroad Co.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

731 U. S. LAND OFFICE,
DETROIT, MINN., *Aug.* 23*d*, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

EXHIBIT 25.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April* 4, 1874.

Register and receiver, Detroit, Minn.

GENTLEMEN: Herewith I transmit a copy of the decision of the Hon. Secretary of the Interior, dated March 27, 1874, overruling the application of the Northern Pacific Railroad Company for a review of the decision of the Department of the 13th May last, in relation to the lands in controversy between that company and the St. Paul & Pacific Railroad Company.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

732 U. S. LAND OFFICE,
DETROIT, MINN., *August* 23, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 27*th March*, 1874.

SIR: I transmit herewith the application of the attorney of the Northern Pacific Railroad Company for a review of my decision of 13th May last in relation to the lands in controversy between that company and the St. Paul & Pacific Railroad Company. The application is overruled, and you will be pleased to so inform the parties in interest.

The papers filed on the application are herewith transmitted for your files.

I am, sir, very respectfully, your ob't servant,
C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r Gen. Land Office.

U. S. LAND OFFICE,
DETROIT, MINN., *Aug.* 23, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

733 EXHIBIT 26.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 21, 1873.

W. A. Newton, Esq., register U. S. land office, care reg'r and rec'r at Alexandria, Minn.

SIR: In reply to your letter of the 8th inst. relative to the maps showing the limits of the grants to the Northern Pacific and St. Paul & Pacific railroads in the new Oak Lake land district, I have to state that the officers at Alexandria should cut off that portion of the diagrams now in their office that fall within the limits of the new district and turn them over with the other papers and documents required for the use of the Oak Lake office.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

U. S. LAND OFFICE,
DETROIT, MINN., *Aug.* 23, 1877.

I do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is on file in this office, and that such copy is a correct transcript from such original.

THOS. C. SHAPLEIGH, *Register.*

734 EXHIBIT 27.

Map showing the lands embraced in the grant to the N. P. R. R. Co. in the Detroit land district in Minnesota.

EXHIBIT 28.

Letter of the Commissioner of the General Land Office to the register and receiver of the U. S. land office at Alexandria, Minn., of date Dec. 26, 1871. This exhibit is of same tenor as Exhibits 30 and 31.

EXHIBIT 29.

Copy of map transmitted from the General Land Office to the U. S. register and receiver of the Alexandria land office, showing the 20, 30, and 40 mile limits of lands granted to the Northern Pacific R. R. Co., within the Alexandria land district.

735 EXHIBIT 30.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 26*th*, 1871.

Register and receiver, Alexandria, Minn.

GENTLEMEN: Referring to my letter to you of the 15th September, 1870, transmitting a map of the designated line and 20-mile limit of the land grant of the Northern Pacific railroad, and directing

withdrawal of land therefor, I now enclose you a map showing the line of the road as constructed, together with the definite 20-mile limits of the grant and the additional 10-mile indemnity limits as granted under the original act of July 2d, 1864, and also the additional 10-mile indemnity limits granted by the joint resolution of 31st May, 1870. These limits are respectively designated as the 20, 30, and 40 mile limits. I have also designated the limits fixed in my letter to you of 15th September, 1870, and you are now directed to withhold from sale or location, pre-emption or homestead entry, all the odd-numbered sections within the limits designated on the map herewith, and not heretofore withdrawn.

You will also increase in price to $2.50 per acre and dispose of, under the pre-emption and homestead laws only, the even-numbered sections formerly outside of the 20-mile limits, as designated on the prior map, but now within that limit, as shown on the diagram herewith. The map of constructed line was filed in this office on the 21st of November ult., from which time the right of the road attaches, according to the terms of the granting act of 2d July, 1864, Stat., vol. 13, page 365.

736 This order, however, does not affect the status of *bona fide* pre-emption or homestead settlers who may have initiated their claims prior to said 21st November, and such persons will be allowed to prove up their entries, either for odd or even sections, at $1.25 per acre, according to law.

You will observe, by reference to the act of 31 May, 1870, that the additional indemnity lands therein granted are only for making up deficiency caused within their granted or 20-mile limits by the disposal of lands in odd sections since the passage of the act of 2d July, 1864, and upon the contingency that such deficiency lands cannot be obtained within the 10-mile indemnity limits prescribed by the act of 2d July, 1864; nor can the company make selections of any lands heretofore reserved for other railroads, or reserved or granted for any other purpose, and which were still reserved at the date of definite location of the road and map thereof filed in this office.

Therefore, in the examination of any lists of lands selected by the company, you will require that those in the 20-mile or granted limits and those in the 30-mile or first indemnity limits shall be presented in separate lists, and you will eliminate or reject therefrom any lands to which the United States had not full title or which are "reserved, sold, granted, or otherwise appropriated," and not free from pre-emption or other claims or rights at the time the line of said road was "definitely fixed and plat thereof filed in the office of the Commissioner of the General Land Office," which was the 21st November, 1871.

It will be further observed that all mineral lands are excluded from the operation of the grant, but that other lands in lieu

737 thereof are granted to be selected within the deficiency limits first mentioned. Said mineral lands, however, shall not be held to include iron and coal.

The following lands in even sections, which by our former order

of withdrawal were increased in price to $2.50 per acre, are now, by the change in the 20-mile limits, brought outside of 20 miles of the road, and, so far as not disposed of, will be opened to entry again, after due notice, at $1.25 per acre, to wit:

S. h'f sec. 4; sec. 6, 8; s. h'f n. e. q'r, s. e. q'r, and w. h'f sec. 10, town. 132, range 39.

S. w. q'r n. w. q'r, w. h'f s. w. q'r, sec. 32, town. 133, range 39.

Secs. 2, 4, 6, 8, 10, 12, town. 132, range 40.

Secs. 18, 20; s. w. q'r sec. 22; s. h'f n. w. q'r, s. h'f s. e. q'r, and s. w. q'r of sec. 26.

Secs. 28, 30, 32, and 34, town. 133, range 40.

Secs. 2, 10, and 12, town. 132, range 41.

S. h'f n. w. q'r, s. h'f n. e. q'r, s. w. q'r, sec. 2; secs. 4, 6, 8, and 10; n. w. q'r and s. h'f sec. 12.

Secs. 14, 18, 22, 24, 26, and 34, town. 133, range 41.

W. h'f s. w. q'r, sec. 18; w. h'f s. w. q'r, sec. 20; s. w. q'r s. e. q'r and s. h'f s. w. q'r, sec. 28; secs. 30 and 32; s. w. q'r n. w. q'r, s. h'f s. e. q'r, n. w. q'r s. w. q'r, and s. h'f s. w. q'r, sec. 34, town. 134, range 41.

Secs. 2, 4, 6, 8, 10, 12, 14, and 18, town. 133, range 42.

W. h'f s. w. q'r, sec. 2; secs. 4, 6, 8, and 10; w. h'f s. w. q'r, sec. 12; secs. 14, 18, 20, 22, 24, 26, 28, 30, 32, and 34, town. 134, range 42.

S. h'f s. w. q'r, sec. 6; sec. 18; w. h'f n. e. q'r, w. h'f s. e. q'r, and w. h'f, sec. 20; w. h'f n. w. q'r, s. w. q'r s. e. q'r, n. w. q'r s. w. q'r, and s. h'f s. w. q'r, sec. 28; secs. 30 and 32; w. h'f s. w. q'r, sec. 34, town. 135, range 42.

738 All even sections except 16 and 36, in town. 135, range 43.

S. h'f sec. 18, w. h'f s. w. q'r sec. 22, s. w. q'r sec. 26, secs. 28, 30, 32, and 34, town. 136, range 43.

Secs. 2, 10, 12, 14, 22, 24, 26, and 34, town. 135, range 44.

Sec. 14, s. h'f sec. 18; secs. 22, 24, 26, and 34, town. 136, range 44.

Sec. 2, e. h'f s. e. q'r and n. h'f sec. 4, n. e. q'r sec. 10, and sec. 12, town. 138, range 36.

Secs. 26, 28, 30, 32, and 34, town. 139, range 36.

Secs. 2, 4, 6, 8, 10, 12, 14, and 18; n. h'f sec. 20; n. h'f n. h'f s. e. q'r, and n. h'f s. w. q'r sec. 22; sec. 24, town. 143, range 43.

Secs. 20, 22, 24, 26, 28, 30, 32, and 34, town. 144, range 43.

Secs. 2, 4, 6, 8, 10, 12, 14, and 18; n. h'f, n. h'f s. e. q'r, and n. h'f s. w. q'r sec. 20; n. h'f, n. h'f s. e. q'r, and n. h'f s. w. q'r sec. 22; n. h'f, n. h'f s. e. q'r, and n. h'f s. w. q'r, sec. 24; n. h'f n. e. q'r, and n. h'f n. w. q'r sec. 30, town. 143, range 44.

All even sections except 16 and 36, town. 144, range 44.

All secs. 20, 28, 30, 32, town. 145, range 44.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24; n. h'f sec. 26, secs. 28 and 30, town. 143, range 45.

All even sections except 16 and 36, towns. 144 and 145, range 45.

Secs. 20, 28, 30, and 32, town. 145, range 45.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30; n. h'f n. e. q'r and n. h'f n. w. q'r sec. 32, n. h'f n. e. q'r and n. h'f n. w. q'r sec. 34, town. 143, range 46.

All even sections except 16 and 36, towns. 144, 145, 146, range 46.

Secs. 20, 28, 30, and 32, town. 147, range 46.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30; n. h'f n. e. q'r and n. h'f n. w. q'r sec. 32, n. h'f n. e. q'r and n. h'f n. w. q'r sec. 34, town. 143, range 47.

739 All even sections except 16 and 36, towns. 144, 145, 146, 147, range 47.

Secs. 20, 28, 30, and 32, town. 148, range 47.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30; n. h'f n. e. q'r and n. h'f n. w. q'r sec. 32, n. h'f n. e. q'r and n. h'f n. w. q'r sec. 34 town. 143, range 48.

All even sections except 16 and 36, towns. 144, 145, 146, 147, and 148, range 48.

Secs. 20, 28, 30, and 32, town. 149, range 48.

Fr'l sections 2, 12, 14, 24, town. 143, range 49.

All even sections except 16 and 36, in fractional townships 144, 145, 146, 147, 148, 149, range 49.

Fractional section 20, sec. 28, and fr'l sec. 32, town. 150, range 49.

You are now directed to give notice for 30 days in a newspaper of general circulation in your district that on a day to be fixed by you, not less than 30 days from date of notice, the above tracts of land or such of them as are undisposed of will be subject to pre-emption and homestead entry and to private entry where heretofore offered at $1.25 per acre, and where unoffered to pre-emption and homestead entry at that price.

You will permit no claims to be initiated or private entries allowed upon the tracts after the notice of restoration and prior to the date on which the tracts are restored at the reduced price.

The receiver, as disbursing agent, will pay for the advertisement and charge in his disbursing account, transmitting therewith proper vouchers for payment.

You are also requested to forward immediately on publi-

740 cation a copy of the paper containing the notice, so that we may be fully advised in the premises.

Be pleased to acknowledge receipt of this by date.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

U. S. LAND OFFICE,
FERGUS FALLS, MINN., *August* 31, 1877.

We hereby certify that the foregoing is a true copy of letter from the Commissioner of the General Land Office, marked "F" and dated Dec. 26, 1871, now on file in this office.

SOREN LISTOE, *Register.*
JOHN H. ALLEN, *Receiver.*

EXHIBIT 31.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 26, 1871.

Register and receiver, St. Cloud, Minn.

GENTLEMEN: Referring to my letter to you of 15th September, 1870, transmitting a map of the designated line and 20-mile limit of the land grant of the Northern Pacific railroad, and directing withdrawal of land therefor, I now enclose you a map showing the line of the road as constructed, together with the definite
741 20-mile limits of the grant and the additional 20-mile indemnity limits as granted under the original act of July 2, 1864, and also the additional 10-mile indemnity limits granted by the joint resolution of 31st May, 1870. These limits are respectively designated as the 20, 30, and 40 mile limits. I have also designated the limits fixed in my letter to you of 15th September, 1870, and you are now directed to withhold from sale or location, pre-emption or homestead entry, all the odd-numbered sections within the limits designated on the map herewith and not heretofore withdrawn. You will also increase in price to $2.50 per acre and dispose of under the pre-emption and homestead laws only the even-numbered sections formerly outside of the 20-mile limits as designated on the prior map, but now within that limit, as shown on the diagram herewith. The map of constructed line was filed in this office on 21st November ult., from which time the right of the road attaches, according to the terms of the granting act of 2d July, 1864, Stat., vol. 13, page 365. This order, however, does not affect the status of *bona fide* pre-emption or homestead settlers who may have initiated their claims prior to said 21st November, and such persons will be allowed to prove up their entries, either for odd or even sections, at $1.25 per acre according to law. You will observe by reference to the act of 31st May, 1870, that the additional indemnity lands herein granted are only for making up deficiency caused within their granted or 20-mile limits by the disposal of lands in odd sections since the passage of the act of 2d July, 1864, and upon the contingency that such deficiency lands cannot be obtained within the 10-mile indemnity limits prescribed by the act of 2d July,
742 1864; nor can the company make selections of any lands heretofore reserved for other railroads or reserved or granted for any other purpose, and which were still reserved at the date of definite location of the road and map thereof filed in this office.

Therefore, in the examination of any lists of lands selected by the company, you will require that those in the 20-mile or granted limits and those in the 30-mile or first indemnity limits shall be presented in separate lists, and you will eliminate or reject therefrom any lands to which the United States had not full title or which were "reserved, sold, granted, or otherwise appropriated," and not free from pre-emption or other claims or rights at the time the line of said road was "definitely fixed and plat thereof filed in the office of the Commissioner of the General Land Office," which was 21st

November, 1871. It will be further observed that all mineral lands are excluded from the operation of the grant, but that other lands in lieu thereof are granted to be selected within the deficiency limits first mentioned. Said mineral lands, however, shall not be held to include iron and coal.

The following lands in even sections, which by our former order of withdrawal were increased in price to $2.50 per acre, are now, by the change in the 20-mile limits, brought outside of 20 miles of the road, and, so far as not disposed of, will be opened to entry again, after due notice, at $1.25 per acre, to wit:

S. h'f sec. 18; n. h'f n. e. q'r, n. h'f n. w. q'r, sec. 20, town. 51, range 24.

S. h'f sec. 14, s. h'f sec. 18, all secs. 20 and 22, n. h'f and n. h'f of s. e. q'r and n. h'f s. w. q'r sec. 24, n. h'f sec. 28; n. h'f, n. h'f of s. e. q'r, and n. h'f s. w. q'r sec. 30, town. 51, range 25.

743 N. e. q'r of n. e. q'r, w. h'f n. e. q'r, n. w. q'r of s. e. q'r, n. h'f of s. w. q'r, and s. w. q'r sec. 4; all sec. 6; n. h'f of n. e. q'r and n. h'f n. w. q'r sec. 8, town. 50, range 26.

S. h'f sec. 20, s. h'f sec. 22, s. h'f sec. 24; all secs. 26, 28, 30, 32; n. h'f, n. e. q'r, s. e. q'r w. h'f s. e. q'r, and s. w. q'r sec. 34, town. 51, range 26.

Secs. 2, 4, 10, 12; n. h'f n. e. q'r, n. h'f n. w. q'r, sec. 14, town 50, range 27.

S. h'f sec. 22, s. h'f sec. 24, sec. 26, sec. 28, sec. 34, town. 51, range 27.

S. h'f sec. 2; s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f sec. 8, s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f sec. 10; all secs. 12, 14, 18, 20, 22, 24, 26, 28, 30, 32.

N. h'f sec. 34, town. 139, range 25.

N. h'f sec. 2; secs. 4, 6; n. h'f sec. 8; n. h'f n. e. q'r, n. h'f n. w. q'r, sec. 18, town. 138, range 26.

S. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f sec. 10; s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f, sec. 12; s. h'f n. e. q'r sec. 14, s. h'f n. w. q'r and s. h'f sec. 18; all secs. 20, 22, 24, 26, 28, 30, 32, and 34, town. 139, range 26.

W. h'f n. w. q'r and w. h'f s. w. q'r sec. 6, town. 137, range 27.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20; n. h'f and s. w. q'r sec. 22; n. h'f n. e. q'r, n. h'f n. w. q'r, s. w. q'r n. w. q'r, and w. h'f s. w. q'r, sec. 28; sec. 30, s. w. q'r sec. 32, town. 138, range 27.

Secs. 2, 4, 6, 8; n. e. q'r s. e. q'r and w. h'f sec. 10, sec. 18, town. 137, range 28; all even sections except 16 and 36, town. 138, range 28.

S. h'f n. e. q'r and s. h'f n. w. q'r and s. h'f sec. 20; s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f, sec. 22; s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f, sec. 24; secs. 26, 28, 32, and 34, town. 139, range 28.

744 Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22; n. h'f, n. h'f s. e. q'r, and s. w. q'r, sec. 24, n. e. q'r and w. h'f sec. 26; secs. 28, 30; n. h'f s. e. q'r, s. w. q'r s. e. q'r, and w. h'f sec. 32; n. w. q'r and n. h'f s. w. q'r sec. 34, town. 137, range 29.

All even sections except 16 and 36, town. 138, range 29; s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f sec. 20; n. e. q'r, s. h'f n. w. q'r, and s.

h'f sec. 22; s. h'f n. e. q'r, s. h'f n. w. q'r, and s. h'f sec. 24; all secs. 26, 28, 30, 32, and 34, town. 139, range 29; n. h'f sec. 2, n. h'f sec. 4; n. h'f, n. h'f s. e. q'r, n. h'f s. w. q'r, sec. 6, town. 136, range 30.

All even sections except 16 and 36, towns. 137 and 138, range 30.

Secs. 26, 28, 30, 32, and 34, town. 139, range 30; n. h'f and n. h'f s. e. q'r sec. 2, n. h'f n. e. q'r and n. h'f n. w. q'r sec. 4, town. 136, range 31.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30; n. h'f, n. h'f s. e. q'r, s. e. q'r s. e. q'r, and n. h'f s. w. q'r, sec. 32; sec. 34, town. 137, range 31.

All even sections except 16 and 36, town. 138, range 31.

Secs. 26, 28, 30, 32, and 34, town. 139, range 31.

Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28; n. h'f, n. h'f s. w. q'r, and s. e. q'r sec. 30; n. h'f n. e. q'r and n. h'f n. w. q'r sec. 34, town. 137, range 32.

All even sections except 16 and 36, town. 138, range 32.

Secs. 26, 28, 30, 32, and 34, town. 139, range 32.

Secs. 2, 4, 6, 8, 10, 12, 14; n. h'f n. e. q'r and n. h'f n. w. q'r, sec. 18.

Secs. 22, 24, and n. h'f 26, town. 137, range 33.

All even sections except 16 and 36, town. 138, range 33.

Secs. 26, 28, 30, 32, and 34, town. 139, range 33.

Sec. 2; n. h'f n. e. q'r, n. h'f n. w. q'r sec. 4; n. e. q'r n. e. q'r sec. 10; n. h'f, n. h'f s. w. q'r, and s. e. q'r sec. 12, town. 137, range 34.

745 Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30; n. h'f, n. h'f s. e. q'r, s e. q'r s. e. q'r, and n. h'f s. w. q'r, sec. 32; sec. 34, town. 138, range 34.

Secs. 26, 28, 30, 32, and 34, town. 139, range 34.

Secs. 2, 4, 6, 8, 10, 12, 14; n. h'f, n. h'f s. e. q'r, s. e. q'r s. e. q'r, and n. h'f s. w. q'r —.

Sec. 18; n. e. q'r, n. h'f s. e. q'r, and n. h'f n. w. q'r, sec. 20; secs. 22, 24; n. h'f and n. h'f s. e. q'r, sec. 26, and n. h'f n. e. q'r, sec. 28, town 138, range 35.

All even sections except 16 and 36, town. 139, range 35; w. h'f sec. 28; secs. 30, 32; w. h'f n. e. q'r, w. h'f s. e. q'r, s. e. q'r s. e. q'r, and w. h'f sec. 34, town. 140, range 35.

You are now directed to give notice for 30 days, in a newspaper of general circulation in your district, that, on a day to be fixed by you, not less than 30 days from the date of notice, the above tracts of land, or such of them as are undisposed of, will be subject to pre-emption and homestead entry and to private entry where heretofore offered at $1.25 per acre, and where unoffered to pre-emption and homestead entry at that price. You will permit no claims to be initiated or private entries allowed upon the tracts after the notice of restoration and prior to the date on which the tracts are restored at the reduced price.

The receiver, as disbursing agent, will pay for the advertisement and charge in his disbursing account, transmitting therewith proper vouchers for payment. You are also requested to forward, imme-

diately on publication, a copy of the paper containing the notice, so that we may be fully advised in the premises.

Be pleased to acknowledge the receipt of this by date.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

746 U. S. LAND OFFICE,
ST. CLOUD, MINN., *Sept. 10th*, 1877.

We, J. V. Brower, register, and Ole Peterson, receiver, of the United States land office at St. Cloud, Minnesota, do hereby certify that the foregoing has been compared by us with the original, and that the same is a correct transcript therefrom.

We further certify that the original, of which the attached is a copy, is by law in our custody.

(Signed) J. V. BROWER, *Register.*
OLE PETERSON, *Receiver.*

EXHIBIT 32.

Maps showing the 20, 30, and 40 mile land-grant limits of the N. P. R. R. Co. in the St. Cloud land district, in Minnesota, being copy of a map transmitted by the General Land Office to the local land office at St. Cloud with Exhibit 31.

EXHIBIT 33.

STATE OF MINNESOTA, EXECUTIVE DEPARTMENT,
ST. PAUL, *Nov. 1st*, 1869.

Hon. J. W. Cox, Secretary of Interior, Washington, D. C.

SIR: I have the honor to transmit by to-day's mail a certified copy of a map, filed in this office Oct. 20, 1869, showing the location
747 of the branch line of the Saint Paul & Pacific R. R. from Crow Wing to a point near the centre (measuring from north to south) of the tier of townships numbered one hundred and forty-two.

Very respectfully, your ob't serv't,
(Signed) WM. R. MARSHALL, *Governor.*

I hereby certify that the above is a true and correct copy of the letter, as recorded in Executive Department Record "D," page 441.

A. COLEMAN MACY,
Governor's Clerk.

EXHIBIT 34.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Dec.* 9, 1869.

SIR: I have received your letter of the 1st ultimo and on the 13th of that month a map purporting to show the branch line or route of the St. Paul & Pacific railroad from Crow Wing to the centre of the tier of townships numbered one hundred and forty-two.

The route of this road as prescribed in the act of Congress is from St. Anthony " via St. Cloud and Crow Wing to the navigable waters of the Red River of the North at such point as the Legislature of said Territory may determine," which latter point was fixed by the Legislature at St. Vincent.

748 The route delineated on the map, commencing at Crow Wing, runs nearly due west for over sixty miles, and then runs in a nearly direct course towards St. Vincent.

Before accepting this map it is necessary that satisfactory evidence should be filed to show that a direct route between Crow Wing and St. Vincent is impracticable, and that the route as far as selected is the most direct and practicable one on which a railroad can be constructed between those points.

The proof required is an affidavit of the engineer who made the exploration and directed the survey, with a sworn copy of exploration, with such other evidence as to the topographical nature of the country as may be accessible and applicable to the subject.

I am, sir, very respectfully, your ob't servant,

(Signed) J. W. COX, *Secretary.*

I hereby certify that the above is a true and correct copy of letter received at executive department, as recorded in Ex. Department Record " D," page 444.

A. COLEMAN MACY,
Governor's Clerk.

749 EXHIBIT 35.

ST. PAUL AND PACIFIC R. R. CO.

At a meeting of the board of directors May 28, 1864.

Resolved by the board of directors of the St. Paul and Pacific Railroad Company, That the terms, conditions, and provisions of the joint resolution of the Congress of the United States, approved July 12, 1862, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," and also the terms, conditions, and provisions of the act of the Legislature of the State of Minnesota, approved March 6, 1863, entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," and also the terms, conditions, and provisions of the act of the Legislature of the State of Minnesota, approved March 4, 1864, entitled "An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company," be, and the same and each and every of them are hereby, approved, accepted, and assented to by the St. Paul and Pacific Railroad Company; and the president and secretary of this company are hereby directed to transmit a duly certified copy of this resolution to the Government of the State.

750 EXHIBIT 36.

At meeting of board of directors Dec. 13, 1871.

Resolved, That the president and secretary be authorized to execute the following release to the United States:

Whereas by an act of Congress approved March 3rd, A. D. 1871, entitled as follows: "An act authorizing the Saint Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," the Saint Paul and Pacific Railroad Company was authorized to alter its branch lines, the said act being in the following words:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the St. Paul and Pacific Railroad Company may so alter its branch lines that instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior it may locate and construct in lieu thereof a line from Crow Wing to Brainerd to intersect with the Northern Pacific railroad and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines as is provided for the present lines by existing laws: Provided, however, That this change shall in no manner enlarge said grant and that this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St.
751 Vincent and from St. Cloud to Lake Superior, and that upon execution of said releases such lands so released shall be considered as immediately restored to market without further legislation;" and

Whereas the said St. Paul and Pacific Railroad Company, on the 22d day of March, A. D. 1871, duly passed the following resolution:

Resolved, That an act of Congress entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3, 1871, be, and the same is hereby, accepted by this company, and that the location of the branch lines of the railroads which this company is by law authorized to construct be, and the same are, altered in conformity with the said act, and the president and secretary of this company are hereby authorized and directed to execute under the corporate seal thereof and deliver to the proper officers of the United States Government the releases of lands appertaining to the route hereby abandoned, mentioned in the said act of Congress as one of the conditions thereof, and generally to do every act and thing necessary or proper to secure to this company the benefit of the said act of Congress, according to the terms thereof:" Now, therefore—

Know all men by these presents the St. Paul and Pacific Railroad Company, in consideration of the premises, hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, not including, however, in this release any lands granted by said act to said company along said new or altered lines.

752 EXHIBIT 37.

At meeting of board of directors November 14, 1864.

"Resolved, That there be created and issued under and pursuant to said act twenty thousand shares, two millions dollars, of special and preferred stock upon the branch railroad of this company to Lake Superior, which this company is authorized to construct and maintain by virtue of an act of the Legislature of the State of Minnesota entitled 'An act to authorize the St. Paul & Pacific Railroad Company to construct a branch road to Lake Superior,' approved March 6th, 1863."

EXHIBIT 38.

Meeting of board March 14, 1865.

Resolved by the board of directors of the St. Paul & Pacific Railroad Company, That the act of the Legislature of the State of Minnesota entitled "An act to aid and facilitate the completion of the St. Paul & Pacific railroad and branches," approved March 2d, 1865, and the act of the Legislature of the State of Minnesota entitled "An act in relation to the taxation of lands granted to the St. Paul and Pacific Railroad Company," approved March 4, 1865, and the terms and provisions of the same and each of them be, and they are hereby, accepted and adopted by the St. Paul & Pacific Railroad Company.

And be it further resolved, That the executive officers of this company be, and they are hereby, directed to file in the office of the secretary of state a certified copy of the foregoing resolution as a notification of the acceptance by this company of said acts.

753 EXHIBIT 39.

At meeting of board of directors October 13, 1869.

"Resolved, That the survey and location of the line of the St. Paul & Pacific railroad from Crow Wing to the northern boundary of Becker county, in the State of Minnesota, heretofore made under the direction of D. C. Shepard, chief engineer of said company, and laid down and shown upon a map of such survey and location, be, and the same is hereby, ratified, confirmed, and adopted as the location of the line of said railroad from Crow Wing to the center of the tier of townships numbered one hundred and forty-two, and the president and chief engineer are hereby directed to file said map with the Governor of the State and provide him with a duplicate thereof, to be filed with the Secretary of the Interior."

EXHIBIT 40.

Meeting of board of directors March 22, 1871.

Resolved, That an act of Congress entitled "An act authorizing the St. Paul & Pacific Railroad Company to change its lines, in consideration of a relinquishment of lands," approved March 3, 1871, be, and the same is hereby, accepted by this company, and that the locations of the branch lines of the railroads which this company is by law authorized to construct be and the same are altered in conformity with the said act, and the president and secretary of this company are hereby authorized and directed to ex-
754 ecute, under the corporate seal thereof, and deliver to the proper officers of the United States Government the releases of lands appertaining to the route hereby abandoned, mentioned in the said act of Congress as one of the conditions thereof, and generally to do every act and thing necessary or proper to secure to this company the benefit of said act of Congress according to the terms thereof.

EXHIBIT 41.

Meeting of board of directors March 22, 1871.

Resolved, That this company commence the surveys of said roads as defined in the foregoing resolution and locate the same to Brainerd and to the point of intersection with the Northern Pacific railroad, at or near Otter Tail or Rush Lakes, and thence to Saint Vincent at the earliest practicable moment, and to prepare and file in the office of the Secretary of the Interior the maps and papers necessary to retire the lands granted by Congress, and that when said roads shall be surveyed and located that said First Division of the Saint Paul & Pacific railroad, in pursuance of their said contract, be requested to proceed to construct said roads at the earliest possible period consistent with the finances of said company.

755 EXHIBIT 42.

Meeting of board of directors March 22, 1871.

Resolved, That the following be adopted as the line upon which to construct the road, to wit: Commencing at a point at or near Crow Wing, thence following the general course of the Mississippi river on the easterly side to a junction with the Northern Pacific railroad in the town of Brainerd, on the Mississippi river; also from a point in the line of the First Division of the St. Paul & Pacific R. R. near St. Cloud or Sauk Rapids, thence by the most direct and feasible route via St. Cloud to a point of junction with the Northern Pacific railroad at or near Otter Tail or Rush Lakes, and thence to Saint Vincent, on the boundary line of British possessions.

EXHIBIT 43.

Meeting of board of directors Dec. 13, 1871.

"Resolved, That the survey and location of the railroad of this company from St. Cloud to St. Vincent and from Crow Wing to Brainerd, made under the supervision of Chas. A. F. Morris, engineer, be, and the same is hereby, approved and adopted, and that duplicate maps of such survey and location, heretofore certified by him and by the president and secretary of this company, dated, respectively, November seventh and November twenty-second, 1871, be placed in the hands of the Governor of the State of Minnesota and the Secretary of the Interior, in compliance with the laws applicable thereto, and that said engineer's report of such location be recorded upon the books of this company."

756 EXHIBIT 44.

OFFICE ST. PAUL & PACIFIC R. R. COMPANY,
ST. PAUL, *June* 18, 1864.

His excellency Stephen Miller, Governor of Minnesota.

SIR: I have the honor to transmit herewith an attested copy of a resolution of the board of directors of the Saint Paul and Pacific Railroad Company, adopted on the 28th day of May, 1864, accepting the terms of the joint resolution of Congress entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," approved July 12, 1862, and accepting also the terms and provisions of the act of the Legislature of the State of Minnesota, approved March 6, 1863, entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior, and the terms and provisions also of the act approved March 4th, 1864, entitled "An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company."

I am, Governor, with great respect, your ob't servant,

EDMUND RICE,
Pres. St Paul & Pacific R. R. Co.

At a meeting of the board of directors of the Saint Paul and Pacific Railroad Company, held, pursuant to notice heretofore duly given, at the office of said company, in Saint Paul, on the 28th day of May, 1864, there were present the following-named directors, to wit: R. R. Nelson, Dwight Woodbury, Richard Chute, Henry T. Welles, and Jas. E. Thompson.

757 On motion, it was unanimously resolved that the terms, conditions, and provisions of the joint resolution of Congress of the United States, approved July 12, 1862, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," and also the terms, provisions, and conditions of the act of the Legislature of the State of Minnesota, approved March 6th, 1863, entitled

"An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," and also the terms, conditions, and provisions of the act of the Legislature of Minnesota, approved March 4th, 1864, entitled "An act to extend the time for the construction of the branch road of the Saint Paul and Pacific Railroad Company," be, and the same and each and every of them are hereby, approved, accepted, and assented to by the Saint Paul and Pacific Railroad Company.

And the president and secretary of this company are hereby directed to transmit a duly certified copy of this resolution to the Governor of the State.

We, Edmund Rice, president, and Henry Acker, secretary, of the Saint Paul and Pacific Railroad Company, do hereby certify that the above and foregoing resolution is a true copy from the records of this office.

In witness whereof we have hereunto affixed our signatures and the corporate seal of said company this 17th day of June, 1864.

(Sig.) EDMUND RICE.

[L. S.] HENRY ACKER, *Secretary.*

758 EXECUTIVE DEPARTMENT,
ST. PAUL, *June* 18, 1864.

Hon. Edmund Rice, president St. Paul & Pacific R. R. Company, St. Paul, Minnesota.

SIR: I respectfully acknowledge receipt of your communication of this date, enclosing an attested copy of the resolution of the board of directors of the Saint Paul and Pacific Railroad Company, adopted 28th of May last, accepting the terms of the joint resolution of Congress entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," approved July 12, 1862, and also accepting sundry acts of the Legislature of the State of Minnesota therein named.

I have caused your said communication, together with the resolution, to be copied at length upon the journal of this department, and have placed the same on file.

I am, very respectfully, your ob'd't servant,

S. MILLER, *Gov. Minn.*

Upon examination I find that upon the 19th of Feb. last I notified the Sec'y of the Interior of the acceptance on behalf of the State of the privileges contained in the above-named joint resolution.

S. M.

I hereby certify that I have compared the foregoing four pages with the official records of the executive department, Journal
759 "B," pages 267, 268, and page 269, and that the same is a true copy of said records and of the whole thereof.

A. COLEMAN MACY,
Governor's Clerk.

STATE OF MINNESOTA,
OFFICE OF SECRETARY OF STATE.

A true copy of the record.
Attest: J. S. IRGENS,
Secretary of State.

[The Great Seal of the State of Minnesota.]

Special Laws of Minnesota Referred to by Plaintiff.

Act of May 22, 1857.

SECTION 1. All such persons who shall become stockholders in the company hereby incorporated shall be, and are hereby, created and declared a body politic and corporate by the name and style of the Minnesota and Pacific Railroad Company, and by that name shall have perpetual succession and shall have and enjoy all the powers, privileges, franchises, and immunities incident to a corporation; may acquire, by purchase or otherwise, and hold, convey, sell, and lease property and estate, either real or personal or mixed; may make, have, and use a common seal, and alter or renew the same at pleasure; may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended against, contract
760 and be contracted with, and shall never set up defense of usury to any contract in any court, and generally may do and perform all and singular the acts and matters which shall be necessary and conducive to the well-being of said corporation.

SEC. 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain, and operate a railroad, with one or more tracks or lines of rails, on such route and with such alignment and graduation as said company shall think proper, from Stillwater, by way of St. Paul and St. Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood river, with a branch from St. Anthony, via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of the Pembina river.

SEC. 12. If said company shall not, within ten days from the passage of this act, accept the same by resolution, to be duly passed by the board of directors and a certified copy thereof filed in the office of the secretary of the Territory, then the same shall be null and void, and, if accepted, then the said company shall, within fifteen months from the first day of September next, grade and complete, ready for the iron, all that portion of said railroad from Stillwater, by way of St. Paul, to St. Anthony, and within nine months thereafter put in actual operation said road from Stillwater, by way of St. Paul, to St. Anthony, and thereafter the work on said line of railroad and branch shall be completed and put in operation at the rate of not less than thirty miles in each year, and within ten years from the 3d day of March, 1857, the whole of said railroad and branch mentioned in said act of Congress and hereby authorized to be constructed by said company shall be completed and in actual use.

761 SEC. 16. For the purpose of aiding in the construction of the railroads hereby authorized, all the interest and estate, present and prospective, of this Territory and of the future State which shall succeed it in or to any or all the lands granted by the Government of the United States to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch, via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, to the point hereinbefore mentioned, agreeably to the terms of an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March 3d, 1857, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by said act of Congress, are hereby granted to said Minnesota and Pacific Company, conditioned that said land shall be exclusively applied to the construction of that road for which it was granted; and provided that the title of said land shall vest in the said Minnesota and Pacific Railroad Company in the manner following—that is to say: Whenever twenty or more continuous miles of said road shall have been located the Governor of the Territory or future State shall certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of said lands shall vest in the said company, and when twenty continuous
762 miles of said road shall have been completed so as to admit of running regular trains on the same the Governor shall certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company until said roads are completed; and it shall be the duty of the Governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed so as to admit of running regular trains of cars over the same; and the Governor shall, in his official capacity and on behalf of the Territory or State and under the great seal thereof, execute and deliver to the said Minnesota and Pacific Railroad Company, whenever it shall, by virtue of the provisions of this act, be entitled to any of said lands, a deed in fee simple of any and all of the lands to which said company shall be entitled.

SEC. 17. The location and designation of the route and line of said railroad and branch shall be made by said company and reported to the Governor from time to time and as fast as the same shall be definitely located and established, and the selection of the lands provided for by the act of Congress aforesaid shall be made as soon thereafter as practicable by said company or such agents as it may designate under the appointment of the Governor of the Territory or future State of Minnesota. Such selections, as well as the survey of said roads and the compensation of such agents, shall be at the cost and charge of said company without charges of any

kind upon the Territory or future State; and said railroads, so constructed by the application of the proceeds of the lands hereby granted, shall be and remain public highways for the use of the Government of the United States, free from any toll or other
763 charge upon the transportation of troops and military property of the United States; and the United States mail shall be transported over said road and branch under the direction of the Post Office Department at such price as Congress may by law direct: Provided, that until such price is fixed by law of Congress the Postmaster General shall have power to determine the same.

Act of May 10, 1862.

SEC. 1. That all the rights, benefits, privileges, property, franchises, and interests of the Minnesota and Pacific Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, agreement, or thing by the said company heretofore done or suffered or by virtue of any law of the State or the Constitution thereof or of the former Territory of Minnesota or by reason of any sale of the same or any part thereof by the Governor of the State on the twenty-third day of June, eighteen hundred and sixty, and bid in and purchased for the benefit of the State, be, and the same are hereby, granted and transferred to Dwight Woodbury, Henry T Welles, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E Thompson, Leander Gorton, Richard Chute, and William Lee, thei associates and successors, for the purpose and on the terms and conditions hereinafter in this act provided, free and clear of all claims or liens thereon and free from all liens and claims by or to the State of Minnesota, except as hereinafter provided.

764 SEC. 2. All the rights, privileges, franchises, lands, property, and interests granted by the Territory of Minnesota to the Minnesota and Pacific Railroad Company by the act of said Territory, approved May twenty-second, one thousand eight hundred and fifty-seven, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State,'" approved March third, eighteen hundred and fifty-seven, are hereby continued and granted to and vested in the said Dwight Woodbury, Henry T. Welles, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William Lee and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said The Minnesota and Pacific Railroad Company had or might or could have by reason of the passage of said act, free and clear of all claims and liens thereon and free from all liens and claims of the State of Minnesota against the same, except such as are retained by the provisions of this act; and the said persons hereinbefore named and their associates and successors shall hereafter be known as the St. Paul and Pacific Railroad Company

and by that name may sue and be sued and have and exercise all the powers, rights, and privileges which heretofore pertained to the said The Minnesota and Pacific Railroad Company by the act hereinbefore referred to or by any other act or law, and the persons hereinbefore named shall be the directors of the said St. Paul and Pacific Railroad Company for one year and until others are elected or appointed in their places.

765 SEC. 3. The provisions in this act contained are upon condition that the said The St. Paul and Pacific Railroad Company shall complete and put into operation and fully equip for business that portion of the main line of said road extending from St. Paul to St. Anthony on or before the first day of December next, and that portion of the branch line of said road extending from St. Anthony to Anoka by the first day of January, eighteen hundred and sixty-four, and to St. Cloud by the first day of January, eighteen hundred and sixty-five, and those portions of the main line of said road extending from Stillwater to St. Paul and from St. Anthony by way of Minneapolis westwardly to the west line of range thirty within one year from the expiration of the time last aforesaid, and to Little Falls by the first day of January, eighteen hundred and sixty-six, and thereafter to continue to construct and put into operation, fully equipped for business, the said road or branch at the rate of thirty miles annually, and all of said road or branch on or before the third day of March, eighteen hundred and sixty-seven: Provided, that as evidence of the good faith and ability of said company to construct the portion of said road between St. Anthony and Anoka within the time named herein said company shall deposit with the Governor of the State on or before the first day of January, 1863, in money or bonds of the United States or of this State or some State of the Union in good credit, the sum of ten thousand dollars, to remain in the hands of the Governor until the first day of January, 1864, or until said road shall be completed to Anoka, as provided by this act, when such deposit shall be returned by the Governor to said company or to the party who shall have

766 made such deposit on the surrender of the receipt given therefor; but if said road from St. Anthony to Anoka shall not be completed and the cars running thereon by the time last named said deposit shall become absolutely the property of the State and shall be disposed of as the Legislature shall direct.

SEC. 5. In case the said The St. Paul and Pacific Railroad Company shall fail to construct, put into operation, and fully equip for business that portion of said road extending from St. Paul to St. Anthony on or before the first day of January next all the rights, benefits, privileges, lands, property, and franchises conferred upon said company by virtue of this act or any law of the State or Territory of Minnesota heretofore passed shall thereupon become forfeited to the State absolutely without any judicial or legal proceedings or any further act or ceremony whatever; and in case the said company shall fail to construct the other and further portions of said road and branch, as provided by this act, and at or within the time or times herein specified, or shall fail to make the deposit required to be made by

the provision to section three of this act by the time named herein, all the lands, property, privileges, rights, and franchises of the said company pertaining to the unbuilt portions of said road and branch shall thereupon become forfeited to the State absolutely and without any further act or ceremony whatever or any judicial or legal proceedings therefor, in which case the said State shall hold the same without merger or extinguishment to be used, granted, and disposed of for the purpose of aiding in the construction of said road as aforesaid; and in either case or in any forfeiture whatever under the provisions of this act the State shall hold and be possessed of all such lands and property and franchises so forfeited without merger or extinguishment to be used, granted, or disposed of for the purpose of aiding and facilitating the construction of said road and branch.

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SEC. 6. For the purpose of aiding in the construction of the St. Paul and Pacific railroad and the branch thereof all the interest of the State, present and prospective, in and to any and all the lands granted by Congress to the Territory of Minnesota for the purpose of aiding in the construction of a road from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of (Big) Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, agreeably to the terms of an act of Congress which was approved March 3d, 1857, together with all and singular the rights, privileges, and immunities conferred and intended to be conferred by said act of Congress, are hereby granted to the said St. Paul and Pacific Railroad Company, conditioned that said land shall be applied to the construction and equipment of said road and for no other purpose whatever. Whenever said company shall actually complete that portion of the road between St. Paul and St. Anthony, so that regular trains of cars are running thereon, and not before, the Governor shall certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of land shall vest in said company; and when twenty continuous miles of said road shall be completed and regular trains running thereon the title to a further quantity of one hundred and twenty sections of land shall vest in said company, and whenever said company shall actually complete twenty continuous miles of said road from Minneapolis westwardly so as to admit of the running of regular trains of cars on the same the Governor shall certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so on, as often as any further twenty continuous miles of said road shall be completed so as to admit of the regular running of trains of cars thereon, the Governor shall in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of said land shall vest in said company, and it shall be the duty of the Governor, whenever said road shall be completed between St. Paul and St. Anthony, in his official capacity and on behalf of the State, to convey to said company one hundred and twenty sections of land,

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and whenever any further twenty continuous miles of said road or its branches shall be completed and in operation the Governor shall in like manner convey a further quantity of one hundred and twenty sections of land, and so on, as often as any further twenty continuous miles of said road or its branches shall be completed, shall in like manner convey to said company a further quantity of one hundred and twenty sections of land, until there shall be conveyed to said company all the lands to which they shall be entitled according to the terms and provisions aforesaid, provided that upon the written authority of said company, filed with the State treasurer, said lands, when the company is entitled thereto, may be conveyed by the State directly to the assigns of said company.

770 Act of March 6, 1863.

SECTION 1. That the provisions of a joint resolution of the Congress of the United States, approved July 12th, 1862, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," be, and the same are hereby, accepted.

SEC. 2. That the Saint Paul and Pacific Railroad Company is hereby authorized and empowered to survey, locate, construct, maintain, and operate, in conformity with the said joint resolution of Congress, within the State of Minnesota, a new branch railroad, having its southwestern terminus at or above some point opposite the town of St. Cloud, upon the existing branch line of said The Saint Paul and Pacific railroad, and extending from thence in a northeasterly direction, by such route as they may select, to the navigable waters of Lake Superior, at or near the mouth of Pigeon river, by way of Duluth; and the said Saint Paul and Pacific Railroad Company shall be entitled to have, receive, and hold, and there is hereby granted to it, all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by said joint resolution of Congress, and the said company may construct and operate the line of road herein provided for in accordance with the terms and provisions of the act of the Legislature of this State entitled "An act to facilitate the construction of the Minnesota and Pacific railroad, and to amend and continue the act of incorporation in relation thereto," approved March 10th, 1862, and for the purpose of constructing said branch railroad the said company shall have and may exercise all the rights, immunities, privileges, and
771 franchises conferred in and by the said last-named act and the act to which it is amendatory, so far as the same may be applicable, provided the grants and franchises hereby conferred or extended are made with the proviso and upon the express condition that they shall in nowise inure to the line of road now located or constructed or to be located or constructed hereafter under the powers of the present act of incorporation of the said Saint — Pacific Railroad Company; and also that no act or deed of the said company shall be competent to embarrass or encumber the grants or franchises hereby made for any purpose connected with the line or lines

of road contemplated by the existing charter of the said railroad companies.

SEC. 3. And it is further provided, that if the said St. Paul and Pacific Railroad Company shall not within two years from the 8th day of March, 1863, construct and equip for business at least twenty miles of said new branch road from the point of divergence heretofore designated on the Mississippi, and also grade and prepare for the laying of the iron at least 20 miles within the State of Minnesota from the navigable waters on Lake Superior, beginning not further down on said lake than at or near Minnesota Point, and thence by the most feasible route in said State in the direction of the southwestern terminus, and shall not within five years from the passage of this act complete said new branch from the Mississippi thence to the navigable waters of Lake Superior, in said State of Minnesota, then all the rights, franchises, lands, property, interests, and immunities hereby granted pertaining to the unfinished portions of said new branch road shall be forfeited to the State and shall not inure in any way to the said Saint Paul and
772 Pacific Railroad Company, but shall be forfeited to and retained by the State of Minnesota for future disposition.

SEC. 4. The said The St. Paul and Pacific Railroad Company shall have power to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof of the road or branch road of any other railroad corporation or company having the same general direction or location, or to become merged therein by way of substitution, upon such terms or conditions as the two companies may agree upon by the consent of a majority of the stockholders of each company, and the two companies, when such consolidation has been made, shall control and manage, by the board of directors of both companies acting jointly, such consolidated road until the first election of directors of said consolidated companies, when the stockholders of said companies shall choose, at such time and place as they shall agree upon, a board of directors, not to exceed eleven in number, who shall have power to adopt a name for such consolidated road, and by which they shall be known and recognized; to adopt a common seal, to sue and be sued, contract and be contracted with, and shall have and enjoy all and singular the rights, right of way, privileges, and immunities of said consolidating companies or either of them as to such consolidated line before such consolidation, which said agreement of consolidation shall be in writing, signed by the president of said consolidating companies respectively, and a copy thereof filed in the office of the secretary of state.

SEC. 5. This act is hereby declared to be a public act, and shall be in force from and after its passage.

Approved March 6, 1863.

773 Act of February 6, 1864.

SEC. 6. The Saint Paul and Pacific Railroad Company shall have the right to relocate the lines of its road and branches so as to run

and construct the main line from Saint Anthony, by the way of Minneapolis, to any point between the foot of Big Stone Lake and the mouth of Sioux Wood river, and the branch from Saint Anthony to the Red River of the North, so as to run and construct the same from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, and it shall not be required of the said company to construct or maintain the said branch road to or by the way of Crow Wing.

SEC. 7. The Saint Paul and Pacific Railroad Company shall complete those portions of their road from Stillwater to Saint Paul and from St. Anthony by the way of Minneapolis westwardly to the distance of twenty miles within two years, and the remaining portion of the main line and part of the branch line from Saint Cloud to the Red River of the North within five years, and there shall be no forfeiture of any of the lands, property, privileges, rights, or franchises of the said company for a failure to complete the same or any part thereof prior to the times above specified.

SEC. 8. The said St. Paul and Pacific Railroad Company is hereby authorized and empowered to extend, survey, locate, construct, maintain, and operate its road from some point at or above Saint Cloud to the westerly end of Lake Superior; and for the purpose of extending, locating, constructing, and operating the same the said company shall have and may exercise all the rights, immunities, privi-
774 leges, and franchises conferred in and by its charter and which are applicable to any other portion of its road or branch road.

Act of March 4, 1864.

SECTION 1. The Saint Paul and Pacific Railroad Company shall have one year in addition to the times respectively mentioned and described in the act entitled "An act to authorize the Saint Paul and Pacific Railroad Company to construct a branch road to Lake Superior" wherein to construct, grade, and equip the said branch road and the several portions thereof specified in said act; and there shall be no forfeiture of any of the lands, property, privileges, rights, or franchises of the said company for a failure to complete the said branch road or any portion thereof prior to the expiration of one year from the times respectively prescribed in and by said act; Provided, nevertheless, that the said company shall, within eight months from the passage of this act, accept the terms and provisions of said act of March 6th, 1863, and of the joint resolution of the Congress of the United States approved July 12th, 1862, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," or this act shall be void and of no effect.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 4, 1864.

775 Act of March 2, 1865.

SECTION 1. That the time for the grading and completion of the respective portions of the line of railroad of the St. Paul and Pacific Railroad Company as now fixed by law be extended for the period of two years, and that all the rights, privileges, franchises, and lands conferred by act of the Legislature of the State of Minnesota approved March 10, 1862, be restored, released, and granted to the said company free and clear of all claim or lien of the said State thereto, and the said company shall have the right and power to extend and construct said road from Winona to La Crescent: Provided, and this act is upon the express condition, That the said company shall complete and equip that portion of the road from Elk river to St. Cloud, with the cars running thereon, on or before the 1st day of September, in the year eighteen hundred and sixty-six, and from thence in a northerly direction to St. Vincent, on the international boundary line, within the time limited by law; also that said company shall build that portion of said road heretofore known as the St. Paul and Winona Branch, by the way of and through the following cities and villages, to wit: Hastings, Red Wing, Lake City, Wabasha, and Minneiska.

Act of March 2, 1867.

SECTION 2. The time limited for the grading and completing the respective portions of the road of said company is hereby extended for the period of two years; but this extension shall not extend or apply to that portion of said road extending from Stillwater
776 to St. Paul nor to that portion of said road extending from St. Anthony via Minneapolis to a point between the foot of Big Stone Lake and the Sioux Wood River: Provided, That if twenty miles of said road, extending from Lake Superior to a point at or above St. Cloud, shall not have been put into operation, with the cars running thereon, by the second day of March, eighteen hundred and seventy, the lands appertaining thereto shall revert and be passed over to the Minneapolis and St. Cloud Railroad Company: And provided further, That this railroad company shall not have the power to consolidate with any other railroad company within this State.

SEC. 3. This act shall be deemed and held to be a public act and shall take effect from and after its passage.

Approved March 2, 1867.

Act of March 6, 1869.

SECTION 1. That the First Division of the St. Paul and Pacific Railroad Company is hereby authorized to survey, locate, and construct a branch railroad from St. Cloud via Sauk Centre and Alexandria to some point on the Red River of the North to be by said company designated: Provided, That said company shall be bound to carry freight and passengers upon said proposed extension upon reasonable rates.

Act of March 3, 1870.

SECTION 1. That section one of an act entitled "An act to authorize the First Division of the St. Paul and Pacific Railroad Com-
777 pany to extend its branch line from Saint Cloud via Sauk Centre and Alexandria to the Red River of the North," approved March sixth, one thousand eight hundred and sixty-nine, be amended so as to read as follows:

SEC. 1. That the First Division of the St. Paul and Pacific Railroad Company is hereby authorized to survey, locate, and construct a branch railroad from St. Cloud via Sauk Centre, Osakis, and Alexandria to some point on the Red River of the North, to be by said company designated: Provided, that said company shall be bound to carry freight and passengers upon said proposed extension upon reasonable rates.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 3, 1870.

Act of March 7, 1870.

SEC. 1. That whereas by a proviso contained in section two of chapter one of the Special Laws of one thousand eight hundred and sixty-seven of an act entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved March second, one thousand eight hundred and sixty-seven, it was declared that if twenty miles of the road of the said company, extending from Lake Superior to a point at or above St. Cloud, shall not have been put into operation, with the cars running thereon, by the second day of March, eighteen hundred and seventy, the lands appertaining thereto should revert and be passed over to the Minneapolis and St.
778 Cloud Railroad Company; and whereas the company first above named has failed to put into operation, with the cars running thereon, the twenty miles of said road therein provided for and required to be built and has in no manner complied with the provisions of the said act or of the said proviso therein contained: Therefore be it enacted by the Legislature of the State of Minnesota, That the lands appertaining to the said road extending from Lake Superior to a point at or above St. Cloud by reason of any grant made by the Congress of the United States or of any law of this State or both are hereby declared to be forfeited and lost to the said The Saint Paul and Pacific Railroad Company, and the said lands are hereby granted to the said Minneapolis and St. Cloud Railroad Company to aid in the construction of their branch road extending from St. Cloud in the direction of Lake Superior, under the provisions of the charter of said last-named company.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 7, 1870.

Act of March 11th, 1873.

SECTION 1. That the time for the grading and completion by the Saint Paul and Pacific Railroad Company of its branch lines of railroad in accordance with the change of such branch lines authorized in an act of Congress of the United States passed March 3d, A. D. 1871, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration
779 & 780 of a relinquishment of land," be, and the same is hereby, extended to and until the 1st day of January, A. D. 1874, and the said company so completing the said line within the time in this act limited shall have and be entitled to the grant of lands in said act of Congress made and provided, and to all and singular the same rights, privileges, immunities, lands, and property as if such lines of railroad had been constructed and put into operation, fully equipped for business, within the time heretofore limited by law for the same, provided that the foregoing extension of time is hereby granted to said railroad company and accepted by it upon the condition that it will carry freight and passengers over its line upon equal and reasonable terms, provided that the branch of said railroad running from St. Cloud to St. Vincent shall run by Sauk Centre, Osakis, Alexandria, Fergus Falls, and Glyndon.

SEC. 2. That all persons or their assigns or legal representatives who in good faith settled upon any of the lands of the Saint Paul and Pacific Railroad Company, at or prior to the time when the line of said road was definitely fixed and located, with a view to pre-empt, and who have continued to occupy the same, shall be at liberty to purchase said land at two dollars and fifty cents per acre, if within the ten-mile limits of said road, and if without such limits at one dollar and twenty-five cents per acre, provided that application therefor and proof of the right to purchase shall be made within six months after the fee of said land shall be acquired by said company.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 11, 1873.

781 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

Additional Evidence on Part of Plaintiff.

782 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY and Others.

Testimony on Part of Complainants.

The counsel for the respective parties appeared by consent to take further testimony in the above-entitled suit, and it was stipulated

and agreed that the taking of such testimony be postponed until Monday, August 26, 1878, at 2 o'clock p. m.

AUGUST 26, 1878—2 p. m.

The parties appeared by their solicitors—Geo. Gray, Esq., for plaintiff, and Geo. L. Otis, Esq., for defendants.

GEO. B. WRIGHT, a witness produced on the part of the plaintiff, being first duly sworn, deposes and says:

My name is Geo. B. Wright; am 43 years old, and reside in Minneapolis, Minnesota; my principal business now is real estate
783 and lumber; formerly, until the last 5 or 6 years, it was surveying and civil engineering. I have resided in Minnesota about 22 years.

Q. What acquaintance, if any, have you with the lands in controversy in this suit—that is, the lands between the forty-mile limits of the Northern Pacific railroad and the twenty-mile limits of the St. Vincent Extension of the St. Paul and Pacific railroad, where they overlap, and state your means of knowledge?

A. I have had a general acquaintance with those lands for the last twelve years and a considerable part of the lands I have an intimate acquaintance with; that acquaintance is derived in part from travelling over the lands and in part from making the Government survey of portions of them and a more minute examination of other portions.

Q. State for what purpose was that more minute examination made.

A. That more minute examination was made with reference to selecting lands for purchase.

Q. What is the character as to their being mineral or otherwise of the lands described in the last preceding interrogatory?

A. I know of no minerals except clay and granite; there are no mineral lands among them.

Q. Have you any business interests about Fergus Falls, Otter Tail county, Minn.? If so, describe what they are and how long you have been interested there.

A. I have town lots and lands in and around that place, and also a saw mill and lumber yard. My first interest there dates back to 1866. In connection with other parties as proprietors I laid out the village of Fergus Falls in 1870.

Q. Do you know where any work of construction of the St. Vincent Extension of the said railroad was done in the year 1872 in
784 that part of Otter Tail county? If so, describe the line of construction with reference to its distance and direction from Fergus Falls.

Objected to by defendants as immaterial.

A. Yes; I am acquainted with that line and saw work being done on it in 1872 and have been over all that part of it since. The work was done to the west and southwest from Fergus Falls. The crossing of Red River was at a point called Dayton, about four and

one-half miles in a direct line southwesterly from Fergus Falls. Directly west from Fergus Falls the line was about seven miles distant. The general course of that line was a northwesterly and southeasterly one.

Q. State, if you please, what was the work of construction done on the line you speak of southwest and westerly from Fergus Falls.

Same objection.

A. The work consisted of grading and building of culverts. I do not remember the exact amount at this time. That grading extended all the way from Dayton to Glyndon, not finished. Between Dayton and a point about fifteen miles northwest, where the line through Fergus Falls intersected this line of construction, there was, I think, about $18,000.00 worth of work done. I went over this line with an engineer, Col. J. B. Clough, of Minneapolis, in the spring of 1873. We had the profile of the line furnished by the engineer of the St. Paul and Pacific Company. We checked on the profile all the work that we found done and computed, as nearly as we could, the amount of work.

Q. Where do the lines through Fergus Falls and through Dayton separate and come together again? And state the distance between those respective points by said partly constructed line.

Same objection.

A. The located line through Fergus Falls was surveyed by Col. Clough in the spring of 1873. His line leaves the Dayton
785 location at a point about seven miles southeast from Fergus Falls and meets it again at a point about fifteen miles northwest of Fergus Falls, the total length of this line being about twenty-two miles and about 3,100 feet shorter than between the points of intersection by the way of Dayton. This line via Fergus Falls is not, however, except at Fergus Falls, very near the first line run by the St. Paul and Pacific Company; that line was considerably further east.

Objection of immateriality applied to entire answer and every part.

Q. You speak of two lines through Fergus Falls. Please describe them and state where they run.

Same objection.

A. (Witness looks at Defendants' Exhibit 50.) The first line run is the line shown in red on this map and was surveyed in September, 1871. My recollection is the second line or the located line passrng through Fergus Falls extended from a point near the southwest corner of town. 132, range 42, through Fergus Falls, and thence in nearly a direct line to a point on the line of construction via Dayton near the southeast corner of town. 134, range 45. A preliminary of this line was run in the fall of 1872 and the final location in the spring of 1873.

Q. State what is the distance at the widest place between the line of construction and the line of definite location.

Same objection.

A. Between five and six miles.

Q. Do you know of a line for the said St. Vincent Extension having been run by the St. Paul & Pacific Railroad Company in the direction of Rush Lake? If so, please state when that line was run and describe it.

Same objection.

A. I only know of it by common report at the time and conversations with persons who were engaged on that survey. It
786 was made some months prior to the first survey by the way of Fergus Falls. My recollection is that it was in the latter part of the winter 1870–1871 and extended from Osakis Lake through town. 132, range 38, and thence to the Otter Tail and Rush Lakes.

Defendants further object to the last answer as incompetent and hearsay.

Q. Did you see any portion of the line last mentioned run or did you see any of the engineering party engaged thereon, or any evidences on the ground of its being run? If so, please state the facts within your knowledge.

Same objection—namely, immaterial.

A. I have no recollection of anything of the sort.

Q. State, if you please, why the line of construction of the said St. Vincent Extension was changed from the line located through Fergus Falls as mentioned.

Objected to as incompetent and immaterial.

A. I don't know. The engineer claimed to me that it very much reduced the cost.

Q. Were or are there any more engineering difficulties on the line through Fergus Falls than on the line partly constructed through Dayton; if so, what are they? Describe them, if any.

Same objections.

A. There was very little difference between the line as finally located by the way of Fergus Falls and the line by the way of Dayton. The principal difference, at the present time, grows out of the fact that the line by Dayton had been partly constructed.

Q. Suppose no construction had been done, what difference would there be in an engineering point of view between the two lines?

Same objections.

A. Very little, if any; but the Fergus line would be preferable on account of being three-fifths of a mile shorter.

Q. Why was the line again located through Fergus Falls?
787 Was there any arrangement made to effect the change? If so, state when that arrangement was made, with whom, and if you have any written evidence thereof please produce the same, and permit a copy thereof to be made and attached to your evidence as an exhibit.

Objected to same as last question.

A. I have stated that Col. Clough made a preliminary survey of that line in the fall of 1872. The result of that survey showed that there was a very little difference in the cost of the two roads via Dayton and via Fergus Falls. Mr. Geo. L. Becker, then president of the St. Paul and Pacific Railroad Company, was shown the results of this survey made by Col. Clough. Mr. R. J. Mendenhall, of Minneapolis, and myself made a proposition to Mr. Becker looking to the construction of the road through Fergus Falls and abandoning the line via Dayton. Mr. Mendenhall and myself were at that time principal proprietors of the town of Fergus Falls. The result was an agreement between us and Mr. Becker, representing the railroad company—I should more properly say between us and the railroad company—which agreement is in writing, dated February 20, 1873, signed by the First Division, St. Paul and Pacific Railroad Company, attested by the seal of the company, and by Geo. B. Wright and R. J. Mendenhall, attested by their respective seals. That agreement was, to the best of my recollection, executed in duplicate, Mr. Becker keeping one copy and I the other, which I here produce.

Paper offered in evidence and a copy thereof is herewith returned, marked Exhibit 67.

Defendant objects to exhibit and testimony in connection therewith as incompetent and immaterial, not objecting to substituting copy for original.

Q. About what time were you engaged in making U. S. surveys in the western part of Minnesota?

A. In the years 1866, 1867, 1868, 1869, 1870.

788 Q. During that time did you know of the engineering parties of the plaintiff being engaged in surveying a line or lines through that country? If so, please state where you knew of their being so engaged and when and how.

Objected to as immaterial by defendants.

A. I did. The first time that I remember of seeing them engaged on that work was in the month of June, 1870, at a point in Otter Tail county near the present constructed line of the road and about half way between where the stations of Perham and Frazee are now, in township 137, range 39. I saw them at work a good many times during that summer. I had previously heard of a preliminary survey made by that company in the southern part of Otter Tail county, and in the month of September, 1869, I saw the stakes of a

railroad survey, which I supposed to be of that survey in town. 133, of range 44, that was running in an eastern and western direction in the direction of Fort Abercrombie. I had previously, I think in the fall of 1867, met the chief engineer of the Northern Pacific Railroad Company, Mr. Johnson, in the northern part of Pope county, I think in town. 125, range 37, at which time he stated to me that he had been examining the country northwest of there with reference to a railroad and was then on his return east.

Cross-examination by defendants' counsel:

Q. Referring — the three several lines testified to by you as run at and near Fergus Falls, you will please state what is the farthest distance between the line as first definitely located in 1871 through Fergus Falls and the line referred to by you as the line finally located through Fergus Falls.

A. I only know that from the map of that first location, a copy of which I once saw in the office of the engineer of the First Division Company, in St. Paul. The furthest distance apart of those
789 two lines is, I think, between four and five miles, the first line lying furthest to the east.

Q. As between the line first definitely located in 1871 and marked on Exhibit 50 with the red line and the so-called line of construction marked on that exhibit with a black line, were not the engineering difficulties very much against the first line?

A. I think the first line would have cost much more in grading, and, although considerably shorter, it is not as good a line as the one partially constructed.

Q. Was not the line referred to by you as the line of final location through Fergus Falls made to deviate from the line referred to by you as the first line of definite location by reason of the engineering difficulties in the way of the first line?

A. No; the first line was not taken into account at all. The final location by the way of Fergus Falls was a deviation from the partly constructed line, the object at that time being to diverge from the constructed line for a short distance as might be and obtain a line which should be as nearly equal to the constructed line as possible and at the same time pass through Fergus Falls.

Q. Was not the line of final location to which you refer a better line, engineering difficulties considered, than said first line of location through Fergus Falls?

A. Yes; it was.

Q. Did you ever do any work as engineer in the location and construction of railroads?

A. Not very much on the construction, but considerable in the location of railroads.

Q. Did you ever run either of these three lines referred to on the ground with instruments?

A. Not personally, but done under my charge by a corps of engineers. That is the final location line. I did not run either of the others. I examined the Dayton line in the spring of 1873.

790 Redirect examination:

Q. What are the differences, in an engineering point of view, in favor of the finally located line through Fergus Falls, as against the first line located through Fergus Falls, and what do they amount to?

A. About all the material difference is in the character of the country over which the first line was run in town. 134 of range 44. There is a range of high broken land, extending southward nearly to the south line of that township, which the first line crosses. The final line passes a little to the south of that range. There are no insuperable obstacles on that first line, but it would cost more to grade. I have seen the profile, and it is rougher than that of the other, but I do not know what the difference would be. I never had any occasion to examine it.

Q. In making the arrangement of which Exhibit 67 * * *, what, if anything, was said about procuring legislation from the then sitting Legislature of the State of Minnesota in regard to the location of the line?

Objected to as incompetent and immaterial.

A. There was a bill pending at the time for an extension of time (in the Legislature of this State) for the building of this railroad. The bill did not name Fergus Falls as a point. Mr. Becker expressed himself as satisfied from our representations and the maps and profiles of the preliminary line run by Col. Clough through Fergus Falls that that line would be satisfactory, and consented to have the bill amended and Fergus Falls named a point on the road.

GEO. B. WRIGHT.

Examination adjourned until Tuesday afternoon, at 2 p. m.

791 TUESDAY, *August* 27, *A. D.* 1878.

The parties appeared, by their said solicitors, and M. L. KNOWLTON, a witness produced by the plaintiff, being first duly sworn, deposes and says:

I have testified in this case heretofore. The lands in controversy in this case are within the land districts of St. Cloud, Fergus Falls, and Detroit. In 1871 those lands were in the St. Cloud and Alexandria districts. Since 1871 and in 1872 Oak Lake district was made by taking a portion of the Alexandria district, and since that Alexandria district has been changed to Fergus Falls and Oak Lake to Detroit.

Q. Within what United States land districts in Minnesota are all the lands within the exterior limits of grant to plaintiff in said State?

A. Taylor's Falls, Duluth, St. Cloud, Fergus Falls, and Detroit.

Q. Did you prepare the schedule of the lands in controversy in this suit attached to plaintiff's bill?

A. I did.

Q. From what did you prepare this schedule?

A. From the patent issued to the State of Minnesota, January 14, 1875, and from the records of the Northern Pacific Railroad Company, and from abstracts of vacant lands within those limits—that is, within the limits of the grants to the respective companies when they overlap.

Q. Have you since then made a more careful and particular examination and comparison of said schedule with said patent? If so, state the result.

A. I have, and found I had left out a few tracts described in the patent omitted from the schedule, and also in a few cases found errors in the descriptions of the lands. I present here a schedule of the omissions, which is marked (Exhibit 68) and herewith
792 returned, and also a list of the errors in descriptions, which is marked (Exhibit 69) and herewith returned. If the schedule which is annexed to the bill were corrected according to these schedules, Exhibits 68 and 69, it would then be correct according to the patent.

Q. Refer to Defendants' Exhibit 50, on which — a black line marked construction location of 1872 and railroad as completed in 1872, and the red line thereon marked record location of 1871, and state what are the deviations of the line of construction from the time of location, according to said exhibit, at or in the vicinity of Osakis, Fergus Falls, and from township 140 north.

Objected to as immaterial and incompetent, the exhibit of itself showing the deviations.

A. At Osakis the line of record location is about five miles south of the line of construction. At Fergus Falls the line of construction is between five and six miles southwest of the line of location; from town. 140 north it varies from two to nearly ten miles, the line of construction being east of the line of location.

Q. What appears to be the average distance of the line of construction east of the line of location from Glyndon north?

Same objection.

A. About four miles.

Q. How far is the intersection of the plaintiffs' railroad with the St. Vincent Extension west of the intersection of the tenth standard parallel with the fourth guide meridian?

Objected to as immaterial.

A. About ninety-one miles.

Q. How far is the point of intersection of the said St. Vincent Extension as definitely located, according to Exhibit 50, with plaintiffs' amended line of general route of October, 1870, from the intersection of the tenth standard parallel with the fourth guide meridian?

Objected to as immaterial.

A. About ninety-two or ninety-three miles.

793 Q. The dotted line from Crow Wing running thence between Otter Tail and Rush Lakes is stated to represent the line of the St. Vincent Extension run in 1869; please state what is the greatest and shortest distances between the line of record location of 1871 of said extension and said line of 1869, so far as the latter was located—*i. e.*, to the center of the township line of 142, between ranges 42 and 43.

Objected to as immaterial.

A. The greatest distance is about fifty miles and the shortest about twenty-five miles.

Q. What is the distance of said line of definite location of 1871 of said St. Vincent Extension from the plaintiffs' amended line of general route of October, 1870, in the vicinity of Rush Lake?

Same objection.

A. Between twenty-five and thirty miles.

Q. How far is the line of definite location of the St. Vincent Extension of 1871 from the line of 1869 of said extension, at or near Rush Lake?

A. About twenty-seven miles.

Q. Where does plaintiffs' line of general route of October, 1870, run, and in what direction in the vicinity of Rush Lake?

Objected to as immaterial.

A. It runs east and west on the north line of township 135.

Q. What is the distance of that line last mentioned from Rush Lake?

Same objection.

A. That line runs two and one-half miles north of Rush Lake.

Q. Please look at Defendants' Exhibit 50, and state how far the line of definite location of said St. Vincent Extension appears east of the Red River of the North from Glyndon north.

Same objection.

794 A. It is not over ten miles at any point, and near the mouth of Marsh river it is within three miles of the Red River of the North. The average distance for the one hundred and fifty miles from Glyndon north to the British boundary would not exceed six miles.

Q. What is the result, as to quantity of lands in place of the grant for the St. Vincent Extension, supposing all the line of location and the river were subject to the grant, of the line being located so near the river—that is, at an average distance from it of six miles from Glyndon north?

Objected to as immaterial and incompetent.

A. It results in a loss of four miles in width of lands in place, which would be two sections per mile of railroad, which would amount to 192,000 acres for the 150 miles of road.

Q. State, if you please, what would have been the effect as to the quantity of lands if the line of definite location had been fixed on the line of construction, as said lines appear on said Exhibit 50.

Same objections.

A. They would have gained the 192,000 acres of land in place and a large amount of indemnity lands to make up deficiencies elsewhere.

Q. Please look at Plaintiff's Exhibit 6 showing the location of the St. Vincent Extension, with certificates and affidavits, dated November 7, 1871, and state if the line of plaintiffs' railroad is noted thereon; if so, state how and when the same is so noted.

A. It is noted in pencil by a line running east and west, crossing the line of definite location of the St. Vincent Extension in section 11 of township 139, range 47, and marked "N. P. R. R." and "N. P. R. R." again.

Q. State where is the line of definite location of plaintiffs' railroad as constructed with reference to the said line marked in pencil on said Exhibit 50.

795 A. It is very near that point. The Northern Pacific Railroad as constructed runs a little north of the center of the north half of said section 11.

Q. State what is your knowledge of lands having been taken by private entry, pre-emption, and under the homestead law along the line of definite location of the St. Vincent Extension of 1871 in Stearns, Todd, and Douglass counties previous to said location.

Objected to as immaterial and incompetent and not the best evidence.

A. They were nearly all taken in Stearns county and the greater portion of those in south part of Todd and eastern portion of Douglass.

Q. Previous to 1871 state whether or not the portions of country you refer to in your last answer had been settled and occupied by settlers and taken up from the Government; and, if it had been, state to what extent generally.

Objected to as immaterial.

A. I should say more than three-fourths. What was taken in that territory would amount to nearly 1,000,000 acres. This is only an estimate.

M. L. KNOWLTON.

Plaintiff offers certificate of the Commissioner of the General Land Office, dated July 24, 1878, which is marked Exhibit 70 and herewith returned.

Objected to by defendants as incompetent and immaterial.

Plaintiff also offers instructions from the General Land Office relating to adjustment of railroad grants, being form of certificate for registers and receivers, annexed to certified lists of lands for land-grant railroad companies, a copy of which is herewith returned, marked Exhibit 71.

796 Same objections; objection to same on account of being copy waived.

Examination adjourned until Thursday afternoon, August 29, at two o'clock.

Examination adjourned until Friday afternoon at two p. m., August 30, 1878.

FRIDAY AFTERNOON, *Aug.* 30, 1878.

The parties appeared, by their said solicitors, and—

EDWARD W. GAYLORD, a witness produced by the plaintiff, being first duly sworn, deposes and says:

Q. What is your name, residence, and occupation?

A. My name is Edward W. Gaylord; I reside at Minneapolis; am assistant superintendent of Minneapolis and St. Louis railroad; am forty years old.

Q. What was your occupation in the years 1870 and 1871?

A. I was agent for contractors on Northern Pacific railroad.

Q. How far had the work of construction of said railroad progressed up to and during the winter of 1870 and 1871?

A. The extreme western point, where grading was being done, was at what is called Oak Lake, Minnesota, Becker county.

Q. How soon after that was the work of construction in progress along the entire line from Oak Lake to Moorhead, on Red River.

A. In the month of July following; July, 1871, is as near as I can fix the time.

Q. When was the road completed and the iron laid to Moorhead?

A. In the month of December, 1871.

E. W. GAYLORD.

797 Plaintiff offers in testimony a map of the branch line of the Minnesota and Pacific railroad from St. Anthony to Crow Wing, with certificate of Edmund Rice, president, and David C. Shepard, chief engineer, dated Nov. 11, 1857; and certificate of David C. Shepard, chief engineer, dated Nov. 10, 1857; and certificate of Chas. L. Chase, secretary of Minnesota Territory, dated Nov. 12, 1857; and certificate of Chas. L. Chase, secretary and acting Governor of Minnesota Territory, dated Nov. 12, 1857; also date of reception at General Land Office, Dec. 5, 1857; and certificate of U. J. Baxter, acting Commissioner of General Land Office, dated Aug. 24, 1878, with the seal of the General Land Office affixed; all appearing on said map, which map is marked Exhibit 72 and herewith returned.

Objected to by defendants as immaterial.

Plaintiff also offers in evidence copy of letter dated Nov. 12, 1857, from Edmund Rice, president of the Minnesota and Pacific Railroad Company, to Nathaniel Pope Cousin, agent, etc., and copy of letter dated Dec. 4, 1857, from Nathaniel Pope Cousin, agent, etc., to Hon.

Thomas A. Hendricks, Commissioner, with a certificate dated Aug. 24, 1878, signed U. J. Baxter, acting Commissioner General Land Office, under the seal of said office thereto attached, which is marked Exhibit 73 and herewith returned.

Defendants waive all objection to authenticity, but object to evidence on the ground that it is incompetent.

Plaintiff also offers in evidence resolution of the board of directors of St. Paul and Pacific Railroad Company of Sept. 15, 1871, and also proceedings of a meeting of the stockholders of said company Nov. 16, 1871, Dec. 13, 1871, and Jan. 9, 1872, with the marginal references appearing on said records, a copy of which resolutions, proceedings, and references is marked Exhibit 74 and herewith returned and with the same and as part of said offer, and accompanying the same plaintiff offers in evidence the proposed resolu-
798 tions referred to in Exhibit 49 of defendants' testimony and in Exhibit 74 of plaintiff's testimony. These are offered in evidence for the purpose of showing that the words "St. Paul & Pacific Co." in defendants' said Exhibit 49 were a clerical error, and should have been St. Paul & Chicago Co. Copy of said proposed resolutions are herewith returned, marked Exhibit 75.

Waiving all objections to the authenticity to said papers and each of the same, defendants object to each of the same as incompetent and immaterial.

WILLIAM P. JEWETT, a witness produced by the plaintiff, being first duly sworn, deposes and says:

Q. Please state your name, age, residence, and occupation.

A. My name is Wm. P. Jewett; am thirty years old; reside at St. Paul. I am chief clerk in the State land office of the State of Minnesota.

Q. How long have you been in that office?

A. Since the first of April, 1875.

Q. Please look at Plaintiff's Exhibit 6, now shown you, and state whose work said exhibit is.

A. It is my own.

Q. When was that exhibit made?

A. In the summer of 1876.

Q. Please look at the line and letters in pencil on said exhibit—the line being a little south of the north line of sections 10, 11, and 12, town. 139, range 47, and of sections 7, 8, 9, and 10, town. 139, range 46, and the letters N. P. R. R. written twice above said pencil line—and state when and by whom said pencil line and letters were drawn on said exhibit.

A. They were drawn by me and at the time I made this exhibit from the original in the State land office.

Q. From what were said line and letters taken and written?

A. From the original map on file in the State land office.

799 Defendants' counsel in due time objected to all the testimony of said witness as immaterial.

WILLIAM P. JEWETT.

Examination continued until Saturday, 31st Aug., 1878, at 11 o'clock a. m.

SATURDAY, *Aug.* 31, 1878.

The parties appeared, by their said solicitors, and GEO. L. BECKER is recalled as a witness for plaintiff.

Q. Will you please look at Defendants' Exhibit 66, purporting to be a copy of a so-called extension mortgage, dated April 1, 1871, and state about when, to the best of your knowledge or recollection, that instrument was fully executed and delivered?

Objected to as immaterial and incompetent.

A. The mortgage was acknowledged by Mr. Walter Henchman, the secretary of the St. Paul and Pacific Railroad Company, and by Geo. L. Becker and Wm. G. Moorhead, as trustees, on the thirteenth day of July, 1871, in the city of New York, and was acknowledged by Edmund Rice, president of said company, and Horace Thompson, trustee, on the twelfth day of August, 1871, in St. Paul. The mortgage was filed for record in the office of the secretary of state of the State of Minnesota on the thirtieth day of August, 1871. The delivery must have been between August 12 and August 30, 1871. I cannot state more particularly.

Q. Are you a stockholder of the defendant corporation?

A. I am.

Q. Since the acquisition by the plaintiff of the majority of the stock of the defendant corporation have there not been and are there not now various and sundry other stockholders of the defendant corporation?

800 Objected to as incompetent and immaterial.

A. There have been and are.

Cross-examination:

Q. Were not some of the bonds issued under said mortgage issued and forwarded for negotiation to Holland some months prior to the final execution of the mortgage?

A. I think they were.

Redirect testimony:

Q. Were not the bonds of the First Division Company secured by said $15,000,000 mortgage that were first sent to Holland returned with the request to have new bonds issued that in form and appearance would be more satisfactory to the Dutch public or bankers, and was not that request complied with and new bonds executed and sent to Holland in accordance with said suggestion?

Objected to as immaterial by defendants.

A. Yes.

Q. About what time was that, General?

A. It was early in the year 1871, and I should think in the month of April, as near as I can recollect.

Recross-examination:

Q. As near as you can, give the date when you commenced forwarding the new bonds that were issued.

A. My recollection is that we commenced forwarding the new bonds in May, 1871.

GEORGE L. BECKER.

WILLIAM R. MARSHALL, a witness, being produced by the plaintiff, being first duly sworn, deposes and says:

Q. What is your name, age, residence, and official position?

801 A. My name is William R. Marshall; am fifty-two years old; reside in St. Paul, Minn.; am State railroad commissioner of Minnesota.

Q. How long have you resided in Minnesota?

A. Thirty-one years.

Q. You have been Governor of said State?

A. Yes, sir.

Q. What acquaintance, if any, with the lands in controversy in this suit—that is to say, the lands within forty miles on each side of the plaintiff's railroad and within twenty miles on each side of the St. Vincent Extension of the St. Paul & Pacific railroad as now located where said limits overlap—have you?

A. I have been on the lands several times during the past eighteen years, both before and since the construction of the roads, particularly in the years 1869 and 1870.

Q. What is the character of those lands as to their being mineral lands or not?

A. They are not mineral lands, but agricultural lands.

Q. Please, Governor, state what you know of lines, preliminary or otherwise, being run or surveyed or reconnoisances and explorations for such lines being made by the plaintiff's railroad in or during the years 1868, 1869, or 1870 in the western part of the State of Minnesota.

Objected to by defendants as immaterial.

A. In 1869. I had knowledge of surveyors at work west of the Mississippi river in April and May, 1870. I personally met them on the ground. I met Mr. Kimberly, assistant engineer of the road, and a party surveying a line in the neighborhood and north of Otter Tail Lake. In the same month I crossed a line that had recently been surveyed between Detroit Lake and White Earth Lake, along the Buffalo river, within five miles of the present constructed line of the Northern Pacific railroad. I traced that line on the Red

802 River flats. I personally knew the assistant engineer who run that line, but cannot now recall his name. I met the same engineer at another time in camp near the Crow Wing river.

No cross-examination.

WM. R. MARSHALL.

Plaintiff's testimony closed.

Examination adjourned until September 10, 1878, at 2 p. m.

SEPTEMBER 10, 1878.

The plaintiff appeared, by Geo. Gray, Esq., its solicitor, and the defendants by Geo. L. Otis, Esq., their solicitor and counsel.

Defendants offer in evidence a certain preamble and resolution adopted by the plaintiff company at a meeting of the board of directors of said company held on the fifteenth day of February, A. D. 1871, and also a certain other preamble and resolutions adopted by the board of directors of the plaintiff company at a meeting held on the tenth day of May, A. D. 1871, a copy of which several preambles and resolutions is herewith returned, marked Exhibit 75.

Defendants also put in evidence so much of the record of a certain other meeting of said board of directors held on the twelfth of May, 1871, as shows that the president of the plaintiff company announced at said meeting as a committee to keep charge of the construction of the St. Paul and Pacific railroad the following members of the board, to wit:

Mr. Moorhead, chairman, the president; the vice-presidents, Mr. Cass and Mr. Felton.

803 To all of which, namely, said preambles and resolutions contained in Exhibit No. 75, and to the portion of the record of proceedings of the board of directors of May 12, 1871, counsel for plaintiff objects on the ground of irrelevancy and immateriality.

804 EXHIBIT 67.

(*Agreement of George B. Wright and R. J. Mendenhall with First Division St. Paul and Pacific Railroad to Construct the Road through Fergus Falls.*)

Articles of agreement made and concluded the twentieth day of February, A. D. 1873, by and between the First Division of the St. Paul and Pacific Railroad Company, party of the first part, and George B. Wright and Richard J. Mendenhall, both of Minneapolis, in the State of Minnesota, parties of the second part, witnesseth:

1. The said party of the first part hereby agrees, in case of the construction within two years from this date of that portion of the St. Vincent Branch (so called) of the Saint Paul and Pacific railroad lying between Evansville and Glyndon, that the same shall be constructed through the village of Fergus Falls, crossing the Otter Tail river at or near the point originally fixed for the location of said railroad by the chief engineer of said party of the first part in the year 1871 and to establish and maintain suitable and proper passenger and freight depots upon said railroad at a convenient place in said village.

2. The said parties of the second part hereby agree to pay to said party of the first part in money, on account of the construction (if within two years) of said railroad through the village of Fergus Falls as aforesaid, any and all excess which may be found, as hereinafter provided, in the cost of said line (deducting therefrom the sum of three thousand five hundred dollars) over and above the

cost of said line of railroad (reckoning from this time and not including the amounts already expended) if constructed upon the route of the present location thereof via Dayton (so called), which payments, if any shall be required, shall be made in the following manner, to wit: One-third upon the completion and putting
805 in operation of said line of railroad to said village of Fergus Falls and the balance in two equal payments, one in one year and one in two years thereafter, with interest upon such deferred payments at the rate of eight per cent. per annum from the date of the completion of the railroad as aforesaid to Fergus Falls.

3. The parties of the second part further agree to give and donate free of cost to the said party of the first part the right of way of seventy feet in width for said line of railroad (if constructed as aforesaid) through the original town plat of Fergus Falls and through all other lands owned by them in Otter Tail county and to give and donate to said party of the first part free of cost not less than twenty acres (including streets) of ground suitable for depot and other railroad purposes upon said line and in said village of Fergus Falls, and in case they shall not be required under the terms of this agreement to pay any sums of money to said party of the first part they further agree to give and donate to said party of the first part free of cost not less than twenty acres (including streets) situated in the original town of Fergus Falls, and in addition to the amount hereinabove specified.

4. It is mutually agreed by and between the parties hereto that, for the purpose of determining the difference in cost of said lines, the parties of the second part may cause said lines to be examined, located, cross-sectioned, and estimated by an engineer of their own choosing, in which case all of the surveys, plans, profiles, and estimates of such location shall be submitted to the chief engineer of the said party of the first part for such examination, resurvey, location, and estimate as deemed by him proper; and upon all points of location, plan, profile, and estimate wherein the said engineers of the parties hereto are agreed their report and award shall be final and conclusive, so far as relates to the purposes of this agreement. In case of any disagreement upon any of the matters of location, plan, profile, and estimate between the said engineers it is
806 mutually agreed by and between the parties hereto that the said points of disagreement shall be submitted for examination and decision to D. C. Shepard, Esq., of St. Paul, Minnesota, or such other engineer as may be hereafter agreed upon by and between the parties hereto, the report and award of which engineer upon the points of difference so submitted shall be final and conclusive, so far as relates to the purposes of this agreement.

5. It is mutually agreed by and between the parties hereto that for the purposes of determining the difference in cost between said lines of railroad via Fergus Falls and via Dayton as aforesaid that the location of said line via Fergus Falls, as hereinbefore provided for, shall be made in the manner required and practiced by the engineers of the said party of the first part in the location and construction of said line of railroad from St. Cloud to St. Vincent, and

shall be subject to the same limitations of character of roadway—width of cuts and fills, slopes, grades, curvature, bridging, track fencing, and the like. The cost of constructing, maintaining, and operating the said lines shall be included in the estimate, and the necessary engineering expenses of survey, location, and estimate of said lines for the purposes of this agreement shall be considered as a part of and paid in the same manner as the other costs of construction of the said line via Fergus Falls.

6. It is further mutually agreed by and between the parties hereto that said party of the first part shall have full power and right in the construction of its said line to vary at pleasure from the location, plans, and estimates of the engineers above named, except as to the point of crossing Otter Tail river, but the parties of the second part shall not be held responsible for any increase of cost due to such change of location or estimate.

7. And for the faithful performance t the agreements hereinbefore set forth the said parties hereto, mutually each to the other, bind themselves, their heirs, successors, and assigns.

807 In witness whereof the said parties of this agreement have hereunto set their hands and seals the day and year first hereinbefore written.

THE FIRST DIVISION OF THE
ST. PAUL AND PACIFIC R. R. CO.,
By GEO. L. BECKER. *President.*
GEO. B. WRIGHT. [SEAL.]
R. J. MENDENHALL. [SEAL.]

In presence of—
As to signature of party of the first part:
B. W. LOTT.
S. P. FOLSOM.

As to signatures of parties of the second part:
W. C. BACON.
LUCIAN SWIFT.

Attest: SAMUEL S. BREED, *Secretary.*

[Seal of First Division of the St. Paul and Pacific Railroad Company.]

NOTE.—It is understood by and between the parties hereto that through the lands of the parties of the second part, not now surveyed and platted in lots and blocks, the right of way shall be donated to said company for 150 feet in width instead of seventy feet as mentioned in the body of this agreement, and that through the original plat of Fergus Falls the line shall be constructed substantially on the route designated by the engineer of the parties of the second part. G. B. W.

EXHIBIT 68.

(*List of Lands Contained in the Patent and Omitted from "Schedule of Lands in Controversy," Heretofore Used as an Exhibit in Testimony.*)

808 T'p 127, R. 32:
S. E. 4 S. W. 4 19
Lots 1 and 2 31

T'p 127, R. 33:
E. 2 S. W. 4 and S. E. 4 1
N. 2 N. E. 4, S. 2 S. E. 4, and lot 3 3
Lots 6 and 7, S. E. 4 S. W. 4 .. 25
Lot 1 35

T'p 129, R. 35:
W. 2 S. W. 4 and S. W. 4 S. W. 4 1
S. W. 4 S. W. 4 13

T'p 131, R. 36:
N. 2 S. W. 4 17

T'p 131, R. 37:
N. E. 4 S. E. 4 15

T'p 130, R. 38:
E. 2 N. E. 4 13

T'p 135, R. 43:
N. E. 4 N. W. 4 23

T'p 133, R. 45:
S. 2 19

T'p 143, R. 45:
All of 13
N. 2 N. E. 4 and N. 2 N. W. 4 .. 25

T'p 144, R. 46:
All of 15

T'p 138, R. 47:
All of 11

T'p 134, R. 48:
Lot 2 23

T'p 135, R. 48:
Lot 1 17

T'p 141, R. 48:
N. E. 4 21

T'p 143, R. 48:
S. E. 4 N. W. 4 29

T'p 145, R. 48:
Lots 1 and 2 19

EXHIBIT 69.

(*List of Errors in Descriptions Contained in "Schedule of Lands in Controversy," Heretofore Used as an Exhibit in Testimony.*)

T'p 130, R. 35:
W. 2 N. E. 4, sec. 35, should be N. 2 N. E. 4 of same section.

809 T'p 137, R. 43:
S. W. 4 S. W. 4, sec. 9, should be S. W. 4 N. W. 4 of same section.

T'p 146, R. 44:
W. 2 S. W. 4, sec. 17, should be W. 2 S. E. 4 of same section.

T'p 138, R. 45:
S. E. 4 N. E. 4, sec. 9, should be S. E. 4 S. E. 4 of same section.

T'p 146, R. 46:
N. 2, sec. 25, should be E. 2 of same section.

EXHIBIT 70.

(*Certificate of Commissioner of the General Land Office.*)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 24, 1878.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that all or any of the lands embraced in and conveyed to the State of Minnesota for the use and benefit of the Saint Vincent Extension of the Saint Paul and Pacific Railroad Company, of said State, by letters patent of the United States bearing date the fourteenth (14th) day of January, anno Domini eighteen hundred and seventy-five (A. D. 1875), were not reserved, sold, granted, or otherwise appropriated (excepting in so far as the same may have been granted, reserved, or appropriated for the use and benefit of the said Saint Vincent Extension of the Saint Paul and Pacific Railroad Company), and were free from pre-emption, homestead, or other
810 claims or rights on the third (3d) day of March, anno Domini eighteen hundred and fifty-seven (A. D. 1857), and the United States had full title thereto and (excepting in so far as they may have been granted, reserved, or appropriated for the use and benefit of the Northern Pacific Railroad Company) said lands remained in such condition up to the date of said letters patent and are not designated or denominated as mineral lands.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, the day and year first above written.

[Seal of the General Land Office.]

J. A. WILLIAMSON,
Commissioner of the General Land Office.

EXHIBIT 71.

(Instructions from General Land Office.)

UNITED STATES LAND OFFICE, ——,
—— —, 18—.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the —— under the grant to the —— by acts of Congress approved —— and selected —— by ——, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States and within the limits of — miles on each side, and that the same are
811 not nor is any part thereof returned and denominated as mineral land or lands nor claimed as swamp lands, nor is

there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

* * * * * * *

——— ———, *Register.*
——— ———, *Receiver.*

EXHIBIT 72.

Map of the branch line of the Minnesota and Pacific railroad from St. Anthony to Crow Wing, with certificate of Edmund Rice, president; David C. Shepard, chief engineer, dated November 11, 1857, and certificate of Chas. L. Chase, secretary of Minnesota Territory, dated November 12, 1857, and certificate of Chas. L. Chase, secretary and acting Governor of Minnesota Territory, dated November 12, 1857; also date of reception at General Land Office, December 5, 1857, and certificate of U. J. Baxter, acting Commissioner of General Land Office, dated August 24, 1878, with the seal of the General Land Office affixed, all appearing on said map.

EXHIBIT 73.

(Copy of letter from Edmund Rice, president of the Minnesota and Pacific Railroad Co., to Nathaniel Pope Cousins, agent, &c.; also copy of letter from said Cousins, agent, &c., to the Hon. Thomas A. Hendricks, commissioner.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *August* 24, 1878.

I, U. J. Baxter, acting Commissioner of the General Land
812 Office, do hereby certify that the annexed copy of letter of N. P. Cousins to this office, dated December 4, 1857, and of letter of Edmund Rice to N. P. Cousins, dated November 12, 1857, are true and literal exemplifications of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal General Land Office.]

U. J. BAXTER,
Acting Commissioner of General Land Office.

WASHINGTON, *4th December*, 1857.

Hon. Thos. A. Hendricks, Commissioner, &c.

SIR: I have the honor to enclose herewith two maps (received this morning by express), exhibiting the definite location of the main lines of the Minnesota & Pacific railroad from Stillwater to Breckenridge, on the Sioux Wood river, and also that portion of the branch line from St. Anthony to Crow Wing, it being impracticable to extend the surveys beyond the latter point during the present year.

They will, however, be resumed early in the spring, as I am advised

by the president of the company (Edmund Rice, Esq.), and as you will perceive from his letter to me accompanying the maps.

Would be pleased, if no objection presents itself, to obtain your approval of the maps at an early day.

Very respectfully, your obedient servant,

NATH'L POPE COUSIN,
Agent for the Territory and R. R. Companies.

813 OFFICE OF THE MINNESOTA & PACIFIC RAILROAD COMPANY,
ST. PAUL, *Nov. 12th*, 1857.

To Nath'l Pope Cousin, Esq., agent of the M. & P. R. R. Co., &c., &c., Washington, D. C.

SIR: I have the honor to transmit herewith two maps of this company, one exhibiting the definite location of its main railroad line from Stillwater to Breckenridge, on the Sioux Wood river, and the other that portion of its branch line from St. Anthony to Crow Wing only, it being impracticable to extend the surveys beyond the latter point during the present year.

They will, however, be resumed early in the spring.

You are requested to file these maps with the Commissioner of the General Land Office and to obtain his approval of the same, and also to notify this company at your earliest convenience of his action in the premises.

Very respectfully, &c., EDMUND RICE,
President M. & P. R. R. Co.

EXHIBIT 74.

(Copy of resolutions of board of directors of St. Paul and Pacific Railroad Company of September 15, 1871; also copy proceedings of meeting of stockholders of said company of November 16, 1871, December 13, 1871, and January 9, 1872.)

At a meeting of the directors of the St. Paul and Pacific Railroad Company, held at 120 Broadway, New York, September, 15, 1871.

814 "At the suggestion of the president (Edmund Rice), the following resolution was, on motion, adopted:

"Meeting of stockholders to consider St. Paul and Chicago resolutions ordered."

"Resolved, That the president be, and he is hereby, authorized to call a special meeting of the stockholders of this company, to meet in the city of New York, at No. 120 Broadway, on 16th day of November next, at 12 o'clock noon, for the purpose of acting upon resolutions relating to the St. Paul and Chicago Railway Company, and that ten days' notice thereof be given by publishing the same in the St. Paul Daily Pioneer."

(Here insert proof of publication of notice of meeting.)

"Pursuant to notice duly published as above, a meeting of the stockholders of the St. Paul and Pacific R. R. Company was held at 120 Broadway, New York, November 16, 1871.

"Meeting organized with Edmund Rice, president, in the chair, and Walter Hinchman was appointed secretary.

"St. Paul and Chicago resolutions tabled."

Mr. Moorhead submitted resolutions in regard to the St. Paul and Chicago railway, which, on motion of Governor Smith, were laid on the table, and the meeting adjourned to the second Tuesday in December, proximo.

WALTER HINCHMAN, *Secretary.*

"Meeting of the stockholders of the St. Paul and Pacific R. R. Co. at 120 Broadway, New York, December 13, 1871, pursuant to adjournment from November 16th, ulto.

"No action on St. Paul and Chicago resolutions yet."

"The subject of the resolutions in regard to the St. Paul and Pacific Co. was discussed, and on account of the relations of this company to the Northern Pacific R. R. Co. it was deemed inexpedient to take action upon them without the advice and concurrence of that company, and, on motion, the meeting adjourned to January 9, 1872, to meet with the directors of the Northern Pacific railroad."

WALTER HINCHMAN, *Secretary.*

815 Pursuant to adjournment of December 13, 1871, the stockholders of the St. Paul and Pacific R. R. Co. met at 120 Broadway, New York, January 9, 1872.

"The action of the directors of the Northern Pacific R. R. Co. at their meeting December 14, 1871, was communicated to this meeting, being as follows: 'Resolved, That the resolution submitted to this board by Edmund Rice concerning the St. Paul and Chicago Railway Company be referred to W. Sinnott for his opinion as to the legal effects of said resolutions upon the rights of this company under its contract with the Chicago and Northwestern road, and to report to this board such form of resolution as it will — safe for the company to pass, all the premises considered.'"

"The resolution was concurred in and the meeting adjourned."

WALTER HINCHMAN, *Secretary.*

EXHIBIT 75.

(Proposed resolutions referred to in Exhibit 49 of defendants' testimony and in Exhibit 74 of plaintiff's testimony; also preambles and resolutions adopted by the plaintiff Co. at meetings of the board of directors of said Co. held, respectively, on the 15th February, 1871, and on the 10th May, 1871; also that portion of the record of meeting — said board of directors held on May 12, 1871, as shows that the president of said plaintiff Co. announced at said meeting a committee to keep charge of the construction of the St. P. & P. R. R's).

"Whereas the directors of this company, at a meeting held on the 19th day of March, A. D. 1867, passed a series of resolutions pur-

porting to establish a separate corporation called the 'St. Paul
816 & Chicago Railway Company,' upon which corporation was conferred or attempted to be conferred all our rights, privileges, and franchises appertaining to the then proposed line of our railroad extending from St. Paul to Winona and thence to the Iowa State line, which action of the directors was in whole or in part confirmed by the stockholders of this company at a meeting held on the 26th day of March, A. D. 1867:

"Now, therefore, reserving to the St. Paul and Pacific Railroad Company all rights, privileges, and property belonging to our corporation not appertaining to the line of railroad extending from St. Paul to Winona, and thence to the Iowa State line, or to the government and control of said line of railway, or to the above-named corporation called the St. Paul and Chicago Railway Company:

"Resolved, That it was the intention of this corporation, by the action of the meeting above referred to, to enact and establish a separate corporation of the holders of the stock then and there authorized to be issued and of their assigns and successors under the name of the St. Paul and Chicago Railway Company.

"Resolved further, That the true intent and purpose of these resolutions is to more fully establish and to confirm the holders of the stock of the St. Paul and Chicago Railway Company, their successors and assigns, as a separate and distinct corporations, duly organized under that name and having and being entitled to all our former rights, powers, privileges, and franchises, including the rights of electing their own directors and officers, the separate and exclusive management of their own corporation and its affairs, and all the lands donated or granted to aid in building said line of railway from St. Paul to Winona, and thence to the Iowa State line, appurtenant or in any manner incident to the said line of railway from St. Paul to Winona, and thence to the Iowa State line, or requisite or desirable for the building, maintaining, operating,
817 using, and enjoying of such line of railway and for the government and control of the corporation building and owning the same; and it is hereby agreed and declared that these resolutions shall stand and be construed as an agreement between this company, of the one part, and the St. Paul and Chicago Railway Company or the stockholders thereof, of the other part, to that end and effect; but in case the last-named company or the stockholders thereof, shall desire of this company the execution of a formal agreement to that same end, the president and secretary of this company are hereby authorized, in the name and behalf of this company, to make, enter into, and execute any and all agreements, writings, and papers necessary or appropriate to fully carry out and effect the purpose and intent expressed in these resolutions.

"Resolved further, That a copy of these resolutions, with the preamble, and of the minutes of this day's proceedings of the stockholders of this company, signed by the president and attested by the secretary, with the corporate seal of this company affixed, be delivered to the St. Paul and Chicago Railway Company whenever it may be convenient so to deliver the same.

818 & 819 No. 5.

United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*

Testimony on Part of Defendants who have Answered.

820 United States Circuit Court, District of Minnesota.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY *et al.*

Testimony on Part of Defendants who have Answered.

The plaintiff appeared, by Geo. Gray, Esq., and John B. Sanborn, Esq., its solicitors, and the defendant trustees appear, by Geo. L. Otis, Esq., their solicitor, and J. P. Farley, Esq., receiver, appears, by I. V. D. Heard, Esq., his solicitor.

Subject to plaintiff's objection that the same is immaterial and irrelevant, it is admitted that on or about the 1st of April, 1871, an agreement was entered into between the First Division of the St. Paul & Pacific Railroad Company, a corporation under the laws of the State of Minnesota, on the one part, and the defendant
821 corporation on the other part, a true copy whereof, omitting signatures and seals, is herewith returned, marked Exhibit "45," and at the same time and as a part of the same transaction the defendant corporation executed and delivered to said First Division Company a lease, a true copy whereof is herewith returned, marked Exhibit "46," omitting signatures and seals, and at the same time and as a part of the same transaction the defendant corporation executed and delivered to the trustees therein named a certain indenture of mortgage for the purposes and in substance, as alleged in defendants' answer, that of the $15,000,000 of bonds in said mortgage described $10,700,000 thereof were negotiated in Holland and are outstanding and unpaid; that default has been made in the payment of the interest maturing on said bonds, and the defendant trustees have commenced proceedings in this court to foreclose the said mortgage, which proceedings are still pending; that the defendant, J. P. Farley, was duly appointed receiver, as in said answer alleged; that the mortgaged property covered by the said $15,000,000 is inadequate security; that said receiver entered upon the discharge of his duties, and is still acting as such receiver, with all the powers and authority vested in him under the orders of this court appointing him such receiver, true copies of which orders are herewith returned, marked Exhibit "47;" that since about the 1st day of March, 1871, until the present time a majority of the stock of the defendant corporation has been held and owned by a trustee in trust for the plaintiff corporation.

Defendants offer in evidence a resolution of the board of directors of the St. Paul & Pacific Railroad Company, passed at a meeting of said board held on the 14th day of November, 1864, providing for the issue of $3,000,000 of special and preferred stock upon that portion of the branch road of said company and the land grant appertaining thereto from Watab to St. Vincent, a copy whereof is herewith returned and marked Exhibit "48."

822

Objected to as immaterial and incompetent; authenticity waived.

Defendants also offer in evidence the minutes of the meeting of the stockholders of the defendant corporation held in New York on the 13th day of December, 1871, from which it appears it was deemed inexpedient to take certain action without the concurrence of the plaintiff company, a copy of which is herewith returned, marked Exhibit "49."

Waiving the authenticity of the evidence, objected to by plaintiff's counsel as incompetent, irrelevant, and immaterial.

Subject to the objection that it is immaterial, it is admitted that in November, 1873, the then Governor of the State of Minnesota accepted as duly constructed the portions of the line of the St. Vincent Extension on which iron was laid, to wit, 35 miles, from St. Cloud to Melrose, and from a point 12 miles south of Glyndon to a point 92 miles north of Glyndon; in all, 139 miles.

Adjourned until Friday, 21st September, 1877, at 10 a. m.

FRIDAY, *September* 21, 1877.

The said parties, plaintiff and defendant, appeared by their said solicitors, John B. Sanborn, Esq., only appearing for plaintiff.

823 Examination adjourned by consent until Tuesday morning, Sept. 25, 1877, at 10 o'clock.

TUESDAY MORNING, *September* 25, 1877.

The said parties appeared by their said solicitors.

EDMUND RICE, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

Question. How long have you lived in St. Paul?

Answer. I have lived here since July, 1849.

Q. You have been connected with the various railroad enterprises in this State since they were inaugurated, have you not?

A. Yes; some of them.

Q. Which ones?

A. Among others, the St. Paul & Pacific. I was connected with that from its inception, in 1862, to December 31, 1871; I was president of the Minnesota & Pacific, the predecessor of this company, from May, 1857, to last of December, 1861; I was president of St. Paul & Pacific Company from its inception, in 1862, until 31st December, 1871.

Q. As its president, what were your duties?

A. I had the active management of its affairs during all this time.

Q. When was the line of road completed to St. Anthony, Anoka, and St. Cloud, respectively?

A. It was completed to St. Anthony about the 2d day of July, 1862; to Anoka about the last of December, 1863; and from
824 some point a few miles beyond Anoka by the First Division Company to St. Cloud about June or July, 1866.

Q. The bill alleges an actual, total, and complete abandonment of all these lines of road prior to the year 1870; is it true that there was such abandonment of these lines? Give, in brief, the history of the enterprise from the time of your first connection with the road up to the year 1870, so far as said history relates to the matter of abandonment.

Plaintiff objects to all that portion of the interrogatory preceding the word "give" as incompetent, asking the opinion of the witness of the results of acts of negligence instead of facts.

A. It never was abandoned; the intention to build was not abandoned. In April, 1862, the company made a contract with Winters, Harshman & Drake to lay the rails and equip the road to St. Anthony, which they performed. In May, 1862, the company made a contract with E. B. Litchfield to lay the rails and finish the grading, which was mostly done, from St. Anthony to Watab, which had been partially performed on the 6th of February, 1864. In order to enable him to obtain more capital and complete his contract the company procured the passage of an act of the Legislature authorizing the issue of special and preferred stock, giving the owners of that stock the control of such portion of the road as it embraced. In pursuance of that act special stock was issued to him, and on that he organized the First Division Company, and he completed the road as far as Sauk Rapids, and under that organization the road from St. Anthony to Breckenridge has been built and equipped.

The St. Paul & Pacific Railroad Company, through me, its
825 president and agent, entered into negotiations, in London, England, in December, 1864, with capitalists in the interests of the Hudson Bay Company and the Grand Trunk Railway Company of Canada for the construction of the St. Paul & Pacific from Winona to St. Paul and from Watab to the British boundary line, which was to include the purchase of the line from St. Paul to Watab. It was upon the condition that the company should obtain four additional sections of land to the mile of its land grant from St. Paul to the British line, and the lateral branch to Lake Superior, which was included in the scheme. The grant was obtained during the winter of 1865, and in April of that year I went to London. Negotiations were continued during my stay there and in New York, in 1865, by bringing the Chicago & Northwestern Railroad Company into the scheme. During the season of 1865, I think it was, the English parties caused thorough examination of the line from Winona to St. Paul to be made by an engineer which they sent here from Canada, and Mr. Brydges, the managing director of the Grand Trunk railway, previously examined the line from St. Paul to St. Cloud. Owing to the cession of the Hudson Bay territory to Canada,

in 1865, the negotiations were partly suspended and were never fully consummated, but in 1866 considerable correspondence was had and subsequently with a view to aid the enterprise to completion. In 1867 the Legislature authorized the company to change its name or that of any of its branches; in pursuance of that changed the name of the line from St. Paul to Winona to that of the St. Paul & Winona Railway Company, having expended thereon the two previous years about $80,000 of British capital. During that year the Chicago & Northwestern Railroad Com-
826 pany undertook to provide means to complete the line from Winona to St. Paul with the ultimate view of carrying it on from Watab to the British possessions. They obtained $3,000,000 of the $5,000,000 capital stock of the St. Paul & Pacific Railroad Company, covering the line from Watab to St. Vincent and the lateral line to Lake Superior. During the year 1868 they expended about $100,000 on the St. Paul & Winona line. In the year 1869—September or October—they furnished the means to locate the line—definitely locate—from Crow Wing to township line No. 142, near the Red River of the North, in the direction of St. Vincent, which was as far as the public surveys had extended at that time, and that location and survey were made. In July of that year (1869), at their request, I entered into negotiations with Jay Cooke & Co., acting for the Northern Pacific Railroad Company, for the sale of their stock in the St. Paul & Pacific Company to the Northern Pacific Railroad Company, and during that year or early in the next year (1870) the sale and transfer of the stock was made to Jay Cooke & Co. in trust for the Northern Pacific Railroad Company, and subsequently the Northern Pacific Company purchased the remaining $2,000,000 of stock of the St. Paul & Pacific Railroad Company and became the owners of its entire stock. I think this was in the fall of the year 1870. The Northern Pacific Co., through me, called a meeting of the board of directors of the St. Paul & Pacific Railroad Company, all of whom resigned except myself, and the board was filled by directors who were also directors of the Northern Pacific Company. This change of directorship was in November or December, 1870, as near as I can recollect.
827 They decided, as they were building from Lake Superior west, crossing the Mississippi at a point near Crow Wing, that the St. Paul & Pacific Company should abandon its lateral line to Lake Superior, and obtained the passage of an act by Congress authorizing it to relocate its lines so as to run directly from St. Cloud to St. Vincent, west of Otter Tail Lake, and obtained an additional grant to aid in extending the line from Crow Wing to Brainerd. An act was accordingly passed to that end, which was approved March 3d, 1871.

As president of the St. Paul & Pacific Railroad Company I executed a mortgage for $15,000,000 to secure the payment of a like amount of bonds issued by the First Division Company, to whom the lines covered under the new grant were also leased, and by whom a contract was made to construct and equip the said lines. I continued to act as president during the whole of the year 1871; di-

rected the survey and location of the lines and attended to the filing and procuring the approval of the location and maps.

All of the foregoing answer is objected to as immaterial and irrelevant.

Q. By whose direction or authority was the line ultimately selected or adopted?

Objected to as incompetent.

A. The directors of the Northern Pacific Railroad Company, through Governor Smith, its president.

Q. Who selected Mr. Morris to act as chief engineer to locate these lines?

Objected to as incompetent.

A. I appointed him by direction of Gov. Smith.

Q. Who was Gov. Smith?

A. J. Gregory Smith, president of the N. P. R. R. Co.

828 Q. Explain how the act of March 2, 1865, came to be passed by the Minnesota Legislature.

Objected to as irrelevant and immaterial.

A. It was passed in furtherance of these negotiations over in London to which I have referred and in anticipation of the act of Congress approved March 3, 1865.

Q. Are you familiar with the history of the early congressional acts relating to these lines of road, including the joint resolution of Congress of July 12, 1862?

A. I am.

Q. State how *that* the intersection of the 10th standard parallel with the 4th guide meridian came to be named in that act, and whether or not that point had ever been previous to said act adopted by the company or by any legislation whatever as a point in said line of road.

Objected to as immaterial and incompetent.

A. There was a grant of lands by Congress in 1854 to aid in the construction of a railroad from the northern boundary of Iowa by the way of St. Paul to the waters of Lake Superior, and a company organized in N. Y. to build the line. Various surveys were made by the company, and subsequently Congress repealed the grant, the validity of which repeal the company contested in the courts of the United States, and, the final decision of the Supreme Court of the United States being against the company, the St. Paul & Pacific, having assurances of capital to aid in the construction of a line from a point between St. Paul and Anoka to Lake Superior, asked the delegation in Congress from Minnesota to get the grant restored from some point on their line between St. Paul and Crow Wing to Lake Superior, and if that was the best they could do to va-

829 cate a portion of the grant south of St. Vincent and procure an equivalent grant to apply upon their line to Lake Superior.

The 10th standard parallel intersecting the 4th guide meridian was named as a point in the resolution of July 12, 1862, as I was informed by Henry M. Rice, who was then in the Senate, because the committee on public lands knew of no natural object or town which could be named as a point where the vacation should commence, that country being then unsurveyed. They estimated that from that point to St. Vincent was about the distance from St. Paul or Crow Wing or some intermediate point to the head-waters of the Lake Superior. The reason why this line was not built pursuant to that grant was that the Lake Superior & Mississippi Railroad Company made application soon after for a grant to aid them in building a line direct to Lake Superior, which was granted.

Q. Was this point of intersection to which you have referred ever made a point in your line of road by any action of your company whatever prior to the passage of this joint resolution?

A. No; it was never brought to the company's attention until it appeared in the resolution. I wish to say in this connection that in the London scheme it was a condition that the land grant vacated by said joint resolution should be restored, and it was accordingly restored by the act of March 3, 1865, which act was passed at the instance of our company.

Q. Was this point of intersection ever recognized or adopted by your company as a point in its line of road after the passage of that joint resolution or at any other time?

830 A. No; it never was. We never supposed if we built this road that we should be obliged to make that a point, but that we could not claim lands north of it unless we got the grant restored; there might be engineering difficulties which would prevent our reaching it.

Q. State what the engineering difficulties are in the way of making that a point in the line.

Objected to as incompetent and immaterial.

A. Engineering difficulties proved to be the existence of swamps, morasses, lakes, sand hills of such a magnitude as to render the building of the road physically and financially impracticable.

Q. Mr. Rice, are you familiar with the history of the Minneapolis & St. Cloud Railroad Company?

A. Well, somewhat so.

Q. Are you personally acquainted with the men connected with that company?

A. Yes, sir.

Q. And its officers?

A. Yes, sir.

Q. State the way that you came to have a knowledge of that company and the sources of that information.

A. I was in the Legislature during the passage of some of the acts procured by that company and was well acquainted with the men actively engaged in its affairs, such as Judge Emmett, Henry T. Welles, and J. P. Wilson, who for many years was the most active

officer in procuring legislation, and who often conferred with me in respect to finding a purchaser for the sale of the charter.

Q. Did they ever, to your knowledge, locate any line of road upon the ground or make any survey between your road and the lake?

831 Objected to as immaterial and irrelevant.

A. I believe they never did.

Q. Would you be likely to know if they had?

A. I think I should, and in addition to that I have been informed by several of the directors that they never did; am very confident that Judge Emmett, the president, so informed me in 1872, and J. P. Wilson, the secretary, also, though lately Wilson tells me he thinks they did run a line part way, but I don't believe there is a word of truth in it.

Q. Do you know the condition of the First Division of the St. Paul & Pacific Railroad Company and the St. Paul & Pacific Railroad Company as to their solvency? And if so, state what that condition is.

Objected to as immaterial.

A. I know they are both insolvent.

Q. State whether you are not so related to the First Division Company as to know its condition in that regard; and, if so, state what that relation is.

A. I am one of three trustees in possession of the main and branch lines of the First Division Company under two mortgages for $1,200,000 and $3,000,000, respectively, by reason of the default of the company in paying coupons for interest due 1873, upon which no interest had been paid up to the time the trustees took possession, October 9, 1876, and there are several subsequent mortgages upon which a similar default now exists.

Q. Witness' attention is called to Exhibit 6. State whether or not a duplicate of that map was filed in the office of the Secretary of the Interior; and, if so, how you have a knowledge of that fact.

832 A. I deposited a copy of that map with the Secretary of the Interior in person—an exact duplicate, map and certificates and affidavits.

Q. What was the date when you so filed said duplicate with said Secretary?

Objected to as incompetent.

A. My recollection is that it was on the 18th November, 1871. It might have been a day earlier, but I think not later.

Q. Have you refreshed your recollection by examination of letters or documents so as to be sure as to this date?

A. I have, and am sure it was not later than the 19th November, 1871.

Q. What took place upon your so filing said map?

A. Well, I presented the map to the Secretary of the Interior,

Mr. Delano, and I read a letter to him, which I left with him with the map, and I stated to him that we had complied with his wishes, as near as we understood them, by so locating the line that we should not embarrass the Department by calling for lands in Dakota Territory, except perhaps at the north end, near St. Vincent. He had called one of the clerks, to whom he referred me, who had charge of that particular branch of railroad matters, and finally it was left for a consultation with Mr. Walter Smith, the solicitor for the Department of the Interior, and, he being engaged with the Attorney General, I left the whole subject in the hands, on the part of the company, of the Hon. Benj. F. Wade, who accompanied me there from New York at the request of the Northern Pacific Railroad Company as their agent. I was obliged to leave Washington, and left on the 19th, I think, for New York, which was the reason of my leaving it with him.

833

Q. Was the map, after you so filed it on the 18th November with the Secretary of the Interior, ever withdrawn from his office by the company?

A. No, sir; and it remained in his office from that time on, as far as I know.

Q. What else took place with reference to that map?

A. It was subsequently approved.

Q. Was there any delay in the matter of the approval and what caused it?

A. The approval was delayed by reason of the releases of the original line from Crow Wing to a point near Otter Tail, &c.—releases contemplated by the act of Congress of March 3, 1871.

Cross-examination:

Q. Give the names of the members of the board of directors of the St. Paul & Pacific Railroad Company in 1871.

A. To the best of my recollection, J. Gregory Smith, Wm. B. Ogden, R. D. Rice, Wm. Moorhead, Geo. W. Cass, myself, and one other gentleman, whose name I do not now recollect, from Pennsylvania.

Q. About how frequent were the meetings of that board during that year?

A. Quite frequent, as often as once in two months, and sometimes oftener.

Q. Was Morris appointed engineer by direction of the board?

A. I think there was no order of the board directing his appointment at the time he was appointed. He was appointed by direction of Gov. Smith, and his acts as engineer were afterwards approved by the board.

834

Q. Do you recollect about the date of the approval of his survey by the board?

A. I don't recollect; but some time before the map of definite location was filed my impression is that I took the map on to New York and submitted it to the board and it was approved, and I brought it back and filed it with the Governor.

Q. When in your direct examination you stated in substance that the line of definite location of the St. Paul & Pacific railroad was

approved by the directors of the Northern Pacific Railroad Company, did you not mean that it was approved by the board of directors of the St. Paul & Pacific, a large majority of whom were also at the same time members of the board of directors of the Northern Pacific Railroad Company?

A. If I so stated, I did mean so.

Q. State whether you have any personal knowledge of the engineering difficulties to be encountered in extending the line to and beyond the intersection of the 10th standard parallel with the 4th guide meridian from Crow Wing.

A. I never made a personal examination. I got my information from the report and affidavit of the engineer Kimball, who made the survey under the direction of Shepard, and the affidavit of Col. Wm. J. Owens, who was one of the engineers of the Northern Pacific Railroad Company.

Q. Was an attempt made to make a survey by that route towards St. Vincent from Crow Wing?

A. Yes; Kimball attempted to make a survey and location as far up as town. 142.

835 Q. How near did that survey approach to this 10th standard parallel when intersected by the 4th guide meridian?

A. It was a considerable distance west, but I cannot state without an examination of the maps what the distance was.

Q. When you speak of filing the map of definite location with the Secretary of the Interior, you mean nothing more than that you delivered it to the Secretary of the Interior and left it with him to be approved?

A. I don't think I used the word filing. I did not intend to. I delivered him the map and left it with him to be approved.

Redirect:

Q. In speaking of the Kimball survey in your cross-examination, do you mean to say that this point of intersection of the 10th standard parallel with the 4th guide meridian was in any sense an objective point on that survey or as such had any connection with it, and was it anything more than an experimental survey to find a proper line from Crow Wing to St. Vincent?

A. That point was not considered at all as anything the company was bound to take notice of, and they did not. The object of the survey was to locate the line definitely on the most practicable route from Crow Wing to township line 142, in the direction of St. Vincent, which was as far as the Government surveys had been extended, as it was a rule of the Department that they would not approve a location on unsurveyed lands.

EDMUND RICE.

836 JESSE P. FARLEY, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

Q. Mr. Farley, you are the receiver of the so-called St. Paul & Pacific Extension lines, are you not?

A. Yes, sir.

Q. What is the date of your first connection with these lines under your receivership?

A. My appointment dates 1st of August, 1873. In a week or ten days I was here on the ground; later than that and early in September of that fall I went over the lines.

Q. State in a general way the condition of the lines at that time.

A. The line from East St. Cloud to Melrose was being operated by the First Division of the St. Paul & Pacific Railroad Company and trains ran over it every day. On the line from Glyndon, running north to a point at or near Snake river, 92 miles, and the line from Glyndon south, 12 miles, as I understood from Mr. Morris, the chief engineer, the iron had been laid about one year. Having received no attention from any one, the track was somewhat washed and grown up with weeds, not so, however, but it could be traveled over with a hand car. The condition of the property was such I did not feel at liberty to call upon the Governor for a certificate of its completion until the track was put in better condition. Early in October following the agents in New York of the bondholders under the $15,000,000 mortgage placed me in funds to go on and complete the road—that is, the 92 and 12 miles spoken of before—in such condition that the Governor of Minnesota would grant his certificate of its completion, which was necessary to file with the
837 Secretary of the Interior or the General Land Office in order to obtain the lands for building that portion of the road. We completed it in a manner satisfactory to the Governor and we got that certificate, and also to the Secretary of the Interior, and we got the lands patented to the State, or a portion of them, for the use and benefit of the St. Paul & Pacific Railroad Company.

Q. State whether you have been in charge of these lines ever since that time and still are in charge of them as such receiver.

A. I have been, sir, and still am.

Q. Are you still operating these lines?

A. That portion of the road from East St. Cloud to Melrose has been operated every working day since that time by running of trains and sectionmen at work on it every day (25 or 30) and station agents at the various stations—all the stations on that line; that portion of the road from Glyndon to Snake river, 92 miles, we continued to operate after it was finished in November, 1873, to the 3d February, 1874, at which time we discontinued running trains until about the 1st of May following. We only earned $150.68 from December, 1873, to 3d of February, 1874, which was not enough to pay for the fuel. We resumed the operation of this line on the 8th of May, 1874, and operated it until the latter part of November, that year, when the boats quit running and we had to stop again for want of business. We commenced operating it again in the early part of May, 1875, and discontinued operating in the latter part of November, in same year, for the same cause, want of business. We commenced again in May, 1876, and discontinued in November, for the same cause. We commenced in April of this year and are operating it now, running a mixed
838 train each way once a day. Since the winter of 1873 we have operated that portion of the road only to Crookston, no living

soul living on the line of the road beyond Crookston and no business whatever beyond that point. Crookston is 67 miles from Glyndon. During these winter months our sectionmen and agents have lived on the line.

Q. What, if any, business connection have you at Crookston?

A. We connected with the Red River Transportation Company's boats at Crookston until October, 1875, when the river got so low they could not get up to Crookston. We then loaned them some iron and they built a road down to a point we afterwards called Fisher's Landing, where there is deep water, about 11 miles below. This seemed to be necessary on account of the low water in the Red River. Boats could not get to Moorhead and could not carry anything out of Crookston on the Red River water.

Q. What was the nature of your arrangement with this transportation company concerning the use of your iron?

Objected to as immaterial.

A. They are to return it, by written contract, any time after demand after 1st November, 1876.

Q. It is now held subject to your order, is it?

A. It is. We permit it to be used in the same way because it is the only means to connect with the boats to earn any money. That is the main source of business now, this connection with this transportation company.

Q. How much of the main track was taken up to accommodate the Fisher's Landing track?

A. My impression is about 6 miles; the rest was taken from side tracks which we had no use for.

839 Q. Are there any section-houses—station-houses—on this 96 miles?

A. Yes, sir; four station-houses, besides one or more temporary section-houses—one at Crookston, one at Glyndon, one at what we call the second siding, one at Sand Hill creek. There is a large freight-house at Glyndon, one at Crookston. There is an engine-house capable of holding 8 engines at Glyndon, a turn-table, blacksmith shop with tools in it—blacksmith's and other tools such as are required for repairs—a stationary engine, &c. There is also a section-house at Wild Rice which I did not mention above. These section-houses have all been occupied by sectionmen ever since I have been on the road. On the road from Glyndon 12 miles south there is a warehouse. We have run trains to that point as often as the traffic demanded it, sometimes once a week and sometimes once a month.

Q. State whether or not the equipment and operating force kept on the road since you so operated it have been sufficient to do all the business that was offered.

A. The equipment on the road during the months we have operated that line has all been hired of the Northern Pacific Railroad Company and First Division St. Paul & Pacific Company, but was quite sufficient during the months we operated the line.

Q. What trains are run on the road during the operating months?

A. One train each way a day, which are generally what we called mixed trains, passenger and freight together.

Q. State whether any road is now in the process of building which will be a feeder to these 104 miles.

A. Yes, sir; a road is being built from Breckenridge to
840 the end of the iron, south of Glyndon, and will be finished by the 15th of October, 1877.

Cross-examination:

Q. How soon did you commence work on the road north of Glyndon after your appointment as receiver?

A. My appointment dated 1st of August, and I commenced work fore part of October following, and worked from 100 to 150 men until some time in November, after frost set in, and we completed it that fall, in 1873.

Q. State whether the men living in the section-houses in winter remain in your employ or are simply permitted to stay there.

A. They are permitted to occupy the houses and receive no compensation until their services are called for, which sometimes happens in winter to keep the telegraph lines open.

Q. The road is not so equipped and provided with water-tanks as to enable you to operate it in winter, is it?

A. It is not. We would put it in such condition if there was business to warrant it.

J. P. FARLEY.

HENRY T. WELLES, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

Q. You reside at Minneapolis, I believe?

A. Yes, sir.

Q. How long have you lived there?

A. 24 years.

841 Q. You are familiar with the Minneapolis and St. Cloud Railroad Company, are you not?

A. I am generally.

Q. State what your connection has been with it, please.

A. A stockholder and director.

Q. Have you not also acted as its secretary, at some time?

A. I don't remember that I have.

Q. When was it incorporated?

A. About 1856, by a special charter.

Q. State whether or no this company ever located upon the ground any line of road between St. Cloud and Superior. I refer to the line of road that it was authorized to construct connecting the waters of the Lake Superior with the line of the St. Paul & Pacific road.

A. It never did to my knowledge.

Q. Did it ever construct any road whatever upon that line or do any work of construction thereon whatever?

Objected to as immaterial.

A. No.

Cross-examination:

Q. State whether the Minneapolis and St. Cloud Railroad Company ever surveyed any lines of road. If yea, what lines?

A. Yes; the line from St. Cloud towards the Minnesota river. It was a sub-company that did this, organized under the Minneapolis & St. Cloud Railroad Company.

Q. Where was the chief office of this company?

A. It was at Minneapolis at one time within six years past; before that it was at St. Cloud.

842 Redirect:

Q. The line to which you refer, from St. Cloud towards the Minnesota river, was a line w[illegible]olly west of the Mississippi river, was it not?

A. It was.

HENRY T. WELLES.

Adjourned until Friday, Sept. 28, 10 a. m.

FRIDAY, *September* 28, 1877.

The parties appeared by their said solicitors, and CHAS. A. F. MORRIS, being recalled as a witness for the defendants, further testifying, says:

Q. Have you, since your last examination, prepared a map showing the line of definite location of the St. Vincent Extension as made in the summer and fall of 1871, as already in evidence, and, in connection therewith, the line of construction under said location upon the said line?

A. I have.

Q. Will you produce it to the master and have it marked as an exhibit?

Map produced by witness and marked Exhibit "50" and herewith returned.

Exhibit 50 offered in evidence by defendants.

Q. Explain said map.

A. The map shows that portion of the State of Minnesota extending from town. 123 to the international boundary at Pembina, showing the line of the St. Vincent Branch commencing at East St. Cloud, in township 36 and range 28, thence extending through
843 the western portion of Benton county; thence through Stearns, Todd, Douglass, Otter Tail, Grant, Clark, Polk, and Pembina counties. This map shows the recorded location of 1871 as connected with the Government surveys as far north as the U. S. surveys were then completed; thence to Pembina by angle of deviation, course, and distance to its northern terminus at St. Vincent. This map also shows the changes made during construction of line of road in black color. The line of definite location is shown in red. That portion of the line which was completed in 1872, with

iron thereon ready for operation, is shown in black color crossed with the number of miles completed marked on the map. This map, being drawn to a scale of six miles to one inch, shows distinctly the distance of deviation, where any is made, from the record location of 1871.

Q. Are these the deviations to which you referred and which you explained in your previous testimony?

A. They are the same as shown on this exhibit.

Q. What does the line colored blue indicate?

A. It shows the constructed line of the Northern Pacific railroad extending eastward from Moorhead, on the Red River, to Brainerd, and thence a certain distance eastward.

Q. What line of road, if any, is now in process of construction that will be tributary to the ironed portions extending from the point 12 miles south of Glyndon to the point 92 miles north thereof?

A. There is a line of railroad now nearly constructed and being pushed to completion as rapidly as possible between Breckenridge and a point on the St. Vincent Branch 12 miles S. E. of Glyndon, known as Barnes, being 33 miles in length. This road is called the Red River and Manitoba railroad. That line is marked in pencil on the map.

844 Q. Is there any line of constructed road between Breckenridge and St. Paul; and, if so, what line?

A. There is. It is known as the First Division St. Paul & Pacific railroad, in length 217 miles.

Q. Whereabouts on this map is the intersection of the 10th standard parallel with the 4th guide meridian?

A. It lies in a southeast direction from the northern terminus of the St. Vincent Branch at Pembina, the distance being about 179 miles in a direct line therefrom. It is at the northeast corner of township 140, range 32.

Cross-examination:

Q. Is the line of road surveyed by Shepard in 1869 indicated on Exhibit "50?"

A. It is shown on Exhibit "50" by a dotted line, commencing at Crow Wing and extending through Wadena, Otter Tail, Cass, and Becker counties to a point in the center of the range of towns known as 142. This terminates in range 43.

CHAS. A. F. MORRIS.

ENOS H. SHAW, a witness produced on the part of defendant, being first duly sworn, deposes and says:

Q. What is your occupation and where do you reside?

A. I reside at Crookston, and am land agent of the St. Paul & Pacific railroad, in the employ of Mr. Farley, receiver.

Q. What are your duties as such agent?

A. In the fall of 1873 I commenced selecting lists of land from

the different land offices at St. Cloud, Alexandria, Litchfield,
845 and Detroit, in which land districts are all the lands appertaining to the St. Vincent line. I compiled all the lists added to these their certificates and took them to the land office for the register's and receiver's approval.

Q. What is the length of the St. Vincent line of road?

A. 320½ miles, as near as I can get at it from the plats. I take that from Mr. Morris's survey.

Q. What is the aggregrate number of acres for that distance called for by the grants to this line of road?

A. 2,051,200 acres.

Q. Have you made examination to see the quantity of lands subject to the grant, including these in controversy?

A. I have. There is already certified by the local land offices as subject to the grant 878,774.82 acres. There is still remaining subject to the grant, within the limits, 919,111.96 acres. Besides these there are 29,782.50 acres already patented to the Northern Pacific Railroad Company within our grant, making an aggregate of lands subject to the grant, including the lands in controversy, of 1,827,669.28 acres, leaving a deficiency of 223,530.82 acres.

E. H. SHAW.

Adjourned untill Saturday, September 29th, 1877, at 2 o'clock p. m.

SATURDAY, *September 29th*, 1877.

The parties appeared by their said solicitors.

GEO. L. BECKER, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

I was president of the First Division of the St. Paul &
846 Pacific Railroad Company during the years 1869, 1870, and 1871; have been such president from February, 1864, to February, 1876, and as such had the active charge and management of its affairs.

Q. Witness' attention is called to the Special Laws of Minnesota, 1869, to act of March 6, 1869, page 246, put in evidence by plaintiff; and also the act of March 3, 1870, Special Laws of 1870, page 332, amendatory of said former act, and also put in evidence by plaintiff, and is asked whether the First Division Company ever accepted of either of said acts or did anything whatever under them.

Objected to as incompetent and immaterial.

A. It did not.

Q. Was the legislation procured at the instance of your company?

Objected to as immaterial.

A. It was not.

Q. State whether or not the plaintiff corporation ever acquired any ownership or control in the capital stock of the First Division Company.

A. It did.

Q. State the time and what interest it acquired.

A. In November, 1870, the Northern Pacific Railroad Company bought all the stock of E. D. Litchfield, Esq., in the First Division Company. His stock consisted of all the shares of the main line and nearly all the shares of the branch line—nine-tenths of them, I think—the main line being the line from St. Anthony to Breckenridge, and the branch line the line from St. Paul to Sauk Rapids. This ownership continued until the summer of 1873, when Mr. Litchfield bought it back.

847 The foregoing answer and question is objected to as immaterial.

Q. Please state what was done with the $15,000,000 bonds which were issued for the construction of the St. Vincent and Brainerd Extensions and secured under the mortgage upon these lines referred to in the pleadings.

Objected to as immaterial.

A. They were, when executed, forwarded to Wm. G. Moorhead, who sent them (all but 30) to Lippman, Rosenthal & Co., at Amsterdam, for sale. They were sold by them to the extent of $10,500,000 or $10,700,000 or thereabouts. The balance were held by Lippman, Rosenthal & Co. as security for alleged advances to the First Division Co., and they had a market value of 4 or 5 cents on the dollar the last that I knew of them. I consider them worthless as a means of raising money for any further prosecution of the work. The proceeds of the bonds, so far as they were sold, have been exhausted. Of these proceeds about $1,300,000 were used in the construction of the extension lines, to wit, from Sauk Rapids to Brainerd and St. Cloud to St. Vincent. The balance has been used in other ways. About $1,500,000 went to complete the main line of the First Division Company; about $1,000,000 for payment of interest coupons on the main and branch lines of the First Division Company; $500,000 were used for commissions and expenses of the firm negotiating them, in round numbers; the proceeds of the balance, I suppose, was reserved by Lippman, Rosenthal & Co. to pay the first three years' interest on the bonds which were sold.

GEO. L. BECKER.

Adjourned until October 15, 1877, at 10 o'clock a. m.

848 MONDAY MORNING, *October 15th*, 1877.

The parties consenting, examination continued until Monday morning, October 29, 1877, at 10 o'clock.

MONDAY MORNING, *October 29th*, 1877.

The parties appeared by their solicitors, and by consent the examination is continued until Saturday, November 3d, 1877, at 2 p. m.

SATURDAY, *November 3d*, 1877.

The parties appeared by their said solicitors, and by consent the examination is continued until Tuesday, November 6, 1877, at 2 o'clock p. m.

TUESDAY, *November* 6, 1877.

The parties appeared by their said solicitors.

Defendants offer in evidence a copy of a record from the Department of the Interior, Washington, viz., letter of Edmund Rice, president of defendant company, to the Secretary of the Interior, dated Nov. 18, 1871, enclosing, on behalf of the Governor of the State of Minnesota, the map of definite location of defendants' line of road (the same being a duplicate of Plaintiff's Exhibit "6"), with the indorsements on said letter showing the receipt of said
849 letter and map by the Secretary of the Interior Nov. 18, 1871, which paper is marked Exhibit "51" and is herewith returned.

Objected to as immaterial.

Defendants offer in evidence a copy of a file from the U. S. General Land Office, at Washington, viz., a letter of the Secretary of the Interior to the Commissioner of the General Land Office, dated Dec. 20, 1871, enclosing the map of definite location, as filed in his office by Mr. Rice, for filing in the General Land Office, which paper is marked Exhibit "52" and is herewith returned.

Objected to as immaterial.

George L. Otis, a witness produced on the part of the defendants, deposes and says: I made personal examination of the files appertaining to defendants' railroad, in the U. S. General Land Office, at Washington, about the middle of October, 1877, and found on file therein an exact duplicate of Plaintiff's Exhibit "6," being the map of definite location of defendants' line of road, and I carefully copied all the indorsements and writing whatever appearing on said duplicate map, and the schedule which I now here produce to the examiner, who marks it Exhibit "53," is a correct copy of such indorsements and writing and of the whole thereof.

Exhibit "53" is offered in evidence and is herewith returned.

Objected to as immaterial.

Defendants offer in evidence a copy of a file or record from the office of the Secretary of the Interior, at Washington, to wit, a certified copy of release of lands along vacated lines, pursuant to a resolution of the defendant company, passed March 22, 1871, dated December 13, 1871, which is marked Exhibit "54" and is herewith returned.

850 Defendants offer in evidence a copy of a file of the U. S. General Land Office, at Washington, to wit, a letter from Geo. L. Becker, as president of the First Division of the St. Paul & Pacific Railroad Company, to the Secretary of the Interior, dated July 31,

1872, embracing a certified copy of a resolution of the plaintiff company of July 31, 1872, which resolution recites, among other things, the action of the Secretary revoking his order of June 18, 1872, withdrawing lands for the defendant company, and the claim of the Minneapolis & Saint Cloud Company to a portion of the lands which the defendant company were required to relinquish by the act of March 3, 1871, and also reciting the belief of the board of directors of the plaintiff company that the action of the Secretary in ordering said lands withdrawn for defendant company is in conformity with the act of March 3, 1871, and appointing a committee of its directors to co-operate with Mr. Becker in getting the order of withdrawal for defendant company sustained by the Department at Washington, which copy is marked Exhibit "55" and is here*unto* returned.

Objected to as irrelevant and immaterial and for the reason that it pertains to a controversy between the defendant company and the Minneapolis & St. Cloud Railroad Company, and not to any controversy between the parties to this action.

Defendants offer in evidence a file of the U. S. General Land Office, at Washington, to wit, letter of the Commissioner to the Secretary of June 9, 1873, submitting list of selections in Oak Lake land district for the 1,920 acres selected for the test case in the Department, which is marked Exhibit "56" and is herewith returned.

851 Objected to as immaterial.

Defendants offer in evidence a file of the U. S. Land Office, at Washington, to wit, a letter of the Secretary of the Interior to the Commissioner, dated September 3, 1872, rescinding the order of 18th June, 1872, which revoked the previous order of withdrawal of lands for the defendant company and restoring said withdrawal, which is marked Exhibit "57," and is herewith returned.

Defendants offer in evidence a file from the General Land Office, at Washington, to wit, a letter of Horace Austin, Governor of Minnesota, to the Secretary of the Interior, dated October 21, 1873, protesting, in the name of the State, against the action of the Land Office in refusing to certify to the defendant company the 25,000 acres of land within the conflicting limits already patented to the plaintiff company, which file is marked Exhibit "58" and is herewith returned.

Objected to as immaterial.

Defendants offer in evidence a copy of a file from the office of the Secretary of the Interior, to wit, copy of a letter from the Secretary of the Interior to Gov. Austin, dated Dec. 4, 1873, acknowledging the receipt of the three construction maps for portions of defendants' line of road, to wit, one map showing the construction of the 35 miles to Melrose, another showing the construction from the point 12 miles south of Glydon to a point 50 miles north thereof, and the other showing the construction of the 55 miles next north of said 50 miles portion, said letter alleging that said maps were on that

day sent to the General Land Office, which copy letter is marked Exhibit "59" and is herewith returned.

852 Objected to as immaterial and incompetent; authenticity waived.

Defendants offer certified copies, from the office of the auditor of the State of Minnesota and *ex officio* land commissioner, of the three certain construction maps referred to in the letter, Exhibit "59," together with the affidavits and certificates thereon, including the certificate of the Governor certifying to the filing of said maps in his office and to the completion and equipment of said lines of road, which copy of maps are marked as follows: The one showing the construction of 35 miles to Melrose, Exhibit "60;" the one showing construction from the point 12 miles south of Glyndon to a point 50 miles north thereof, Exhibit "61," and the other, showing the construction of the 55 miles next north of said 50 miles, is marked Exhibit "62," and are herewith returned.

Objected to as immaterial.

Defendants offer in evidence a file from the General Land Office, at Washington, to wit, a certified copy of a duplicate of said Exhibit "62," showing the construction of the 55 miles of road and showing the filing of said duplicate in said General Land Office on Dec. 5, 1873, with the certificate of the Governor of Minnesota thereon and the affidavit of the chief engineer and the certificate of J. P. Farley, receiver, which file is marked Exhibit "63" and is herewith returned.

Objected to as immaterial.

Defendants offer in evidence a certified copy of a file from the General Land Office, to wit, a copy of a duplicate of said construction map, Exhibit "60," showing the filing of said duplicate
853 in the General Land Office, at Washington, Dec. 5, 1873, together with all certificates and indorsements thereon, which copy is marked Exhibit "64," and is herewith returned.

Objected to as immaterial.

Defendants offer in evidence a certificate of the Commissioner of the General Land Office, dated Oct. 18, 1877, certifying to the loss, in the confusion incident to a recent conflagration in his office, of one of said construction maps, being a duplicate of said Exhibit "61," which is marked Exhibit "65" and is herewith returned.

Objected to as immaterial.

Defendants offer copy of the mortgage, omitting certificates and seals, executed by the defendant corporation to trustees, upon defendants' road from St. Cloud to St. Vincent, dated April 1, 1871, to secure $15,000,000, being the same mortgage referred to in the bill of complaint, which is marked Exhibit "66" and is herewith returned.

Objected to as immaterial.

Defendants offer in evidence the following acts and parts of acts of the Territory and State of Minnesota, to wit:

1st. All the acts and parts of acts already put in by the plaintiff, except the following acts deemed by the defendants to be immaterial, to wit:

Said acts of March 3d, 1870, and March 7th, 1870.

2d. The following acts and parts of acts, to wit:

All the balance of chapter I of said act of May 22, 1857, not already put in by plaintiff, omitting as immaterial sections 7, 9, 10, 13, 14, 15, 18, 19, 22, 23, 24, 26, and 27. (See laws 1857, pages 4 to 16, inclusive.)

Also section 4 of said act of May 10, 1862. (Special Laws 1862, page 250.)

854 Also sections 2, 3, and 4 of the act of March 2, 1865. (Special Laws 1865, pages 42 and 43.)

Also sections 2, 3, and 4 of the act of March 6, 1869. (Special Laws 1869, page 247.)

Also act of March 5, 1874. (Special Laws 1874, pages 329, 330, and 331.)

Also act of March 8, 1875. (Special Laws 1875, pages 275 and 276.)

Also act of March 6, 1876. (Special Laws 1876, pages 203 and 204.)

Also act of March 1, 1877, sections 6, 7, 8, and 12. (Special Laws 1877, pages 259, 260, and 263.)

Testimony on part of defendants closed.

Examination continued until 24th Nov., 1877, at 2 o'clock p. m.

855 EXHIBIT 45.

Articles of agreement, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, by and between the First Division of the Saint Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and the Saint Paul and Pacific Railroad Company, a corporation of the same State, of the second part, witnesseth:

That the said parties of the first and second parts have promised and agreed, and by these presents do covenant, promise, and agree, to and with each other as follows, to wit:

I. The said party of the first part has agreed, and does hereby agree, to assume and undertake to construct the lines of railroad which the said party of the second part is by law authorized to construct, maintain, and operate in the said State of Minnesota from some point at or near Saint Cloud, county of Stearns, to Saint Vincent, in the county of Pembina, being a distance of two hundred and ninety-three (293) miles, more or less, and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, a distance of fifty-five (55) miles, more or less, and to complete, equip, and put the same and every part thereof in good running order and condition within the time and in the manner required by the acts of Congress granting lands to the Territory and State of Minnesota to aid in the

construction of said railroads, to wit, an act of the said Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain
856 railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa," approved March 3d, 1865, and a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3d, 1871, and the acts of the Legislature of said State of Minnesota executing the trust created by said acts of Congress or in relation to the disposition of the lands therein mentioned, to wit, an act of the said Legislature entitled "An act to facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof or relating to the railroad therein described, approved, respectively, February 6th, 1864, March 4th, 1864, and March 2d, 1865, or such other acts as shall or may hereafter be passed by the said Congress and the said Legislature, respectively, so that the said party of the second part shall and may become vested under the said acts with the legal title to all and singular the lands thereby granted to aid in the construction of the said railroads or either of them—that is to say, the said party of the first part shall and will, within the time aforesaid, and so as to perfect the title of the said party of the second part to the said lands, construct and grade the said railroads in sections of ten miles, lay the same with iron rails, as required by law, with all necessary switches, side tracks, and turn-outs; erect
857 and build upon and in connection therewith all necessary bridges, viaducts, culverts, fences, and other structures, and all depots, stations, station-houses, car-houses, engine-houses, freight-houses, wood-houses, machine and other shops, and put upon and appropriate to the use of the said railroads, free from all incumbrances, except the deed of trust or mortgage hereinafter mentioned, all locomotives, tenders, passenger, baggage, freight, and other cars, and other rolling stock which may be necessary and proper to accommodate the business thereof, and in all respects construct, complete, furnish, and equip the said railroads, so that the same shall be, in respect to the road-bed, rails, and superstructure thereof, and, so far as the business shall require, in respect to the equipment thereof and the facilities in the transaction of business, in good order and condition and equal in all respects to the railroad heretofore constructed by the said party of the first part between St. Paul and Watab, and the said party of the first part undertakes such construction and equipment of said railroads on the following terms and conditions—that is to say:

The said party of the first part shall execute, issue, and offer for sale and negotiation a series of bonds amounting in the aggregate to fifteen millions of dollars, and consisting of fifteen thousand

bonds of one thousand dollars each, and bearing date the first day of April, in the year one thousand eight hundred and seventy-one, and payable on the first day of January, in the year one thousand nine hundred and one, in lawful money of the United States, in the city of New York, or in British pounds sterling in the city of London at the rate of four British shillings per dollar, at the option
858 of the holder, and bearing interest at the rate of seven per centum per annum, payable semi-annually in the lawful money of the United States, if demanded in New York, or in British pounds sterling, if demanded in London aforesaid, at the option of the holder of the coupons representing the same; and the said party of the second part shall and will, for the benefit of the parties who may become holders of the said bonds, assume and secure the payment thereof by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said railroads so to be constructed, with their respective equipments, appurtenances, and franchises; and also of and upon all right, title, and interest now held and hereafter to be acquired by the said party of the second part in and to the lands granted or to be granted by Congress, as aforesaid, to aid in the construction of said railroads or either of them, which deed of trust or mortgage shall be in the most approved form for the purpose of securing the payment of said bonds and all interest to accrue thereon; and subject to the said deed of trust or mortgage, but not otherwise, the said party of the second part shall execute and deliver to the said party of the first part and the said party of the first part shall receive and accept a lease of said railroads for the term of ninety-nine years, the said party of the first part agreeing to operate, maintain, and supply, from time to time, with all necessary and proper equipment the said railroads, and to apply semi-annually any and all net earnings and income of the said railroads to the payment, as the same shall fall due, of the interest on said bonds; and if, in any year, after paying in full out of the said net earnings all interest on said bonds which shall
859 have become due, a balance of the said net earnings shall remain, to pay over the same to the trustees for the time being under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of the interest on said bonds and the redemption of the principal thereof in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction of said railroads therein mentioned; provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then and from thenceforth all net earnings of the said railroads or of either of them remaining in any year after paying the expenses of operating and maintaining the said railroads during such year and carrying on the business thereof shall, within a reasonable time after the close of such year, be paid over to the said party of the second part to an amount equal, so far as such net earnings may suffice, to a dividend of six per centum upon the

whole aggregate amount of the capital stock of the said party of the second part now issued and outstanding.

II. The said party of the second part agrees to suffer and permit the said party of the first part to enter into and upon the said railroads for the purpose of constructing, completing, and equipping the same as aforesaid, and for that purpose to exercise all the rights, privileges, and franchises of the said party of the second part in respect thereto; and the said party of the second part promises and agrees to execute upon said railroads and upon its title and
860 interest in the lands granted or to be granted by Congress as aforesaid a deed of trust or mortgage as aforesaid, and, subject to such deed of trust or mortgage and to all and singular the provisions and requirements thereof, to lease the said railroads to the said party of the first part and suffer and permit the said party of the first part to operate, maintain, and enjoy the said railroads for and during the said term of ninety-nine years, applying the net earnings or income thereof as hereinbefore stated.

In witness whereof the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed and the same to be attested by the signatures of their respective presidents and secretaries the day and year first above written.

EXHIBIT 46.

This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, by and between the St. Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and the First Division of the Saint Paul and Pacific Railroad Company, a corporation of the same State, of the second part, witnesseth:

Whereas the said party of the second part has, by an agreement bearing even date herewith, contracted and agreed to assume and undertake the construction of the lines of railroad which the said party of the first part is by law authorized to construct, maintain, and operate in the said State of Minnesota from some point
861 at or near St. Cloud, in the county of Stearns, to St. Vincent, in the county of Pembina, being a distance of two hundred and ninety-three (293) miles, more or less, and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, being a distance of fifty-five (55) miles, more or less, and to complete and put the same and every part thereof in good running order and condition within the time and in the manner required by the acts of Congress granting lands to the Territory and State of Minnesota to aid in the construction of said railroads, to wit, an act of the said Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the States of

Minnesota and Iowa, and for other purposes," approved March 3d, 1865; and a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3d, 1871, and the acts of the Legislature of said State of Minnesota executing the trust created by the said acts of Congress or in relation to the disposition of the lands therein mentioned, to wit, an act of the said Legislature entitled "An act to facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof or relating to the
862 railroad therein described, approved, respectively, February 6th, 1864, March 4th, 1864, and March 2d, 1865, or such other acts as shall or may hereafter be passed by the said Congress and the said Legislature respectively, so that the said party of the first part shall and may become vested under the said acts with the legal title to all and singular the lands thereby granted to aid in the construction of the said lines of railroad or either of them;

And whereas the said party of the second part in and by such contract agreed to execute, issue, and offer for sale and negotiation a series of bonds amounting in the aggregate to fifteen millions of dollars and consisting of fifteen thousand bonds of one thousand dollars each, bearing date on the first day of April, in the year one thousand eight hundred and seventy-one, and payable on the first day of January, in the year one thousand nine hundred and one, in lawful money of the United States, in the city of New York, or in British pounds sterling in the city of London at the rate of four British shillings per dollar, at the option of the holder, and bearing interest at the rate of seven per centum per annum, payable semi-annually in the lawful money of the United States if demanded in New York or in British pounds sterling if demanded in London aforesaid, at the option of the holder of the coupons representing the same; and the said party of the first part agreed, for the benefit of the parties who may become holders of the said bonds, to assume and secure the payment thereof by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said lines of railroad so to be constructed, with their equipments, appurtenances, and franchises, and also of and
863 upon all right, title, and interest now held and hereafter to be acquired by the said party of the first part in and to the lands granted by Congress as aforesaid to aid in the construction of said lines of railroad; and subject to said deed of trust or mortgage, but not otherwise, to execute and deliver to the said party of the second part a lease of the said lines of railroad for the term of ninety-nine years, the said party of the second part agreeing to operate, maintain, and from time to time supply with all necessary and proper equipment the said railroads and to apply semi-annually any and all net earnings and income thereof to the payment in the first place of the interest on said bonds as the same shall fall due; and if in any year, after paying in full out of the said net earnings all interest on said bonds which shall have become due,

a balance or surplus of the said net earnings shall remain, to pay over the same to the trustees for the time being under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of the interest on said bonds and the redemption of the principal thereof in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction of said railroads therein mentioned: Provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied; principal as well as interest, or due provision made in money for the payment thereof, then and from thenceforth all net earnings of the said railroads or either of them remaining in any year after paying the expenses of operating and maintaining the said railroads during such year and carrying on the business thereof shall within a reasonable time after the close of such year be paid over to the said party of the first part to an amount equal, so far as such net earnings may suffice, to a dividend of six per centum upon the whole aggregate amount of the capital stock of the said party of the first part now issued and outstanding;

And whereas the said party of the second part has duly executed the series of bonds aforesaid to the amount of fifteen millions of dollars and is about to endeavor to negotiate the same for the purpose of procuring the means necessary to construct and equip said lines of railroad in pursuance of the said construction contract and in conformity therewith, and the said party of the first part, in like conformity to said contract, has duly executed and delivered the deed of trust or mortgage securing the payment of said bonds in the said construction contract mentioned:

Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the premises and of the sum of one dollar to it duly paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, demised, and leased, and by these presents doth grant, demise, and lease, unto the said party of the second part, its successors and assigns, all and singular the railroads aforesaid which the said party of the first part is authorized to construct from a point at or near Saint Cloud aforesaid to Saint Vincent, in the said State of Minnesota, and from Watab aforesaid to Brainerd, in the same State, together with the appurtenances of the said railroads, respectively, and the rights, privileges, and franchises thereunto belonging or in anywise appertaining, or which shall or may at any time hereafter thereunto belong or in anywise appertain:

To have and to hold the said railroads unto the said party of the second part, its successors and assigns, for and during the term of ninety-nine years from the date hereof, it and they keeping and performing the covenants and making, from time to time, the payments mentioned in these presents to be by it or them kept, performed, or made.

And the said party of the second part, for itself, its successors

and assigns, covenants, promises, and agrees to and with the said party of the first part that the said party of the second part, its successors or assigns, shall and will construct the said lines of railroad to be constructed as aforesaid from Saint Cloud to Saint Vincent and from Watab to Brainerd in the time and in the manner hereinbefore mentioned, and shall and will from time to time and as the same may be needed procure and supply for use upon the said railroads, respectively, any and all rolling stock, equipment, and materials whatsoever which shall or may be necessary and proper for the purpose of transacting the business of the said railroads or either of them, and it is understood and agreed and hereby declared that any and all rolling stock, equipments, and materials whatsoever which pursuant to this lease or otherwise shall or may be acquired or furnished for the use of the said railroads or either of them by the said party of the second part, its successors or assigns, shall by the mere acquisition thereof for such use become and be part and parcel of the property granted by the deed of trust or mortgage aforesaid, bearing even date herewith, made by the said party of the first part
866 to secure said issue of bonds of the said party of the second part to the amount of fifteen millions of dollars, and become and be in all respects subject to the lien and operation thereof in the same manner and with the same effect as if such property had been acquired by the said party of the first part hereto for such use, as is also provided and declared in the fifteenth article of the said deed of trust or mortgage; and that the said party of the second part, its successors or assigns, shall and will operate and maintain the said lines of railroad for the said term of ninety-nine years in the manner hereinbefore mentioned, subject always, however, to the deed of trust or mortgage aforesaid and all and singular the provisions thereof and the powers, rights, and authorities therein granted; and that it or they shall and will in each and every year and at all times during said term, until the bonds aforesaid shall be fully paid and satisfied, use and apply the net earnings made or derived from the said lines of railroad or either of them or the business of the same in and to the payment, in the first place, of the interest on the bonds aforesaid as such interest shall semi-annually become due and payable, and, if in any year after the payment of such interest a surplus or balance of such net earnings remain, pay over such surplus or balance to the trustees for the time being under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of interest on said bonds and the redemption of the principal thereof in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction of said railroads therein mentioned:
867 Provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then and from thenceforth all net earnings of the said railroads or either of them remaining in any year after paying the expenses of oper-

ating and maintaining the said railroads during such year and carrying on the business thereof shall, within a reasonable time after the close of such year, be paid over to the said party of the first part to an amount equal to a dividend of six per cent. on the existing capital stock of the said party of the first part as aforesaid, so far as such balance may suffice; and that the said party of the second part, its successors and assigns, shall and will do and perform any and every act and thing mentioned or required in the deed of trust or mortgage aforesaid to be by it or them done or performed, and at the end of the said term or other sooner determination of this lease surrender up the said premises to the said party of the first part, its successors or assigns.

And the said party of the second part further covenants, promises, and agrees to and with the said party of the first part that the said party of the second part, its successors or assigns, shall and will, within a reasonable time after the expiration of each and every calendar year during the term aforesaid ensuing the date hereof, furnish to the said party of the first part, its successors or assigns, full, true, and detailed statements of the earnings of said railroads and the expenses of operating and maintaining the same during such year, and that any and all books of account and vouchers containing or purporting to contain the accounts or entries of
868 such earnings or the expenses of the said railroads or either of them shall at all reasonable hours and times be open to the inspection of the said party of the first part, its successors or assigns, with the right to take transcripts therefrom.

In witness whereof the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed and the same to be attested by the signatures of their respective presidents and secretaries the day and year first above written.

EXHIBIT 47.

Opinion of Judge Dillon.

Circuit Court of the United States for the District of Minnesota.

JOHN S. KENNEDY, HENRY M. BAKER, and JOHN S. BARNES
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, THE FIRST Division of the St. Paul and Pacific Railroad Company, the Northern Pacific Railroad Company, Walter L. Cutting, Russell Sage, Samuel J. Tilden, Edmund Rice, Horace Thompson, George T. M. Davis, John P. Yelverton, Wm. Morehead, George L. Becker.

The application of the plaintiffs for the appointment of a receiver in this cause coming on for a hearing before me, at my chambers,
869 in the city of Davenport, in the State of Iowa, and after hearing the bill and various affidavits and proofs of the respective parties, and Messrs. Gilman, Otis and Gilfillan, of counsel for the plaintiffs, and Mr. Bigelow, of counsel for the defendants, The First Division of the St. Paul and Pacific Railroad Company, and

George L. Becker and Horace Thompson and Mr. Gray, of counsel for defendant, The St. Paul and Pacific Railroad Company, and Mr. Smith, of counsel for the defendant, The Northern Pacific Railroad Company, appearing specially and objecting that the court has not jurisdiction of said defendant, and Mr. Cuyler, of counsel for defendant, Wm. G. Morehead, and after due deliberation thereon, it is ordered, adjudged, and decreed that Jesse P. Farley, Esq., of Dubuque, Iowa, be, and he is hereby, appointed receiver of all and singular that certain branch line of railroad of the defendant, The St. Paul and Pacific Railroad Company, or which the said railroad company by law is authorized to construct and which is to be constructed and run from a point at or near the town of St. Cloud, in the county of Stearns and State of Minnesota, to the town of St. Vincent, in said State, and also of that other line of railroad of said defendant, The St. Paul and Pacific Railroad Company, which said railroad company is by law authorized to construct and which is to be constructed and to run from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, within said State, as contemplated by various acts of Congress of the United States, and also of all the right, title, and interest which said defendant, The St. Paul and Pacific Railroad Company, has now or shall at any time hereafter acquire by reason of the construction of said railroads or of either or of any part of either thereof in, to, and concerning all the lands situate in said State of Minnesota and granted
870 or intended to be granted by various acts of the Congress of the United States for the purpose of aiding in the construction of said lines of railroad, or which the said defendant, The St. Paul and Pacific Railroad Company, has acquired or may be entitled to or may hereafter acquire pertaining to said railroads by grants from said State of Minnesota, and of all and singular the road-beds, tracks, bridges, viaducts, culverts, fences, freight-houses, wood-houses, machine shops and other shops, and all structures, buildings, and materials whatsoever placed or to be placed on the said railroads respectively or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also of all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all rolling stock whatsoever, and also of all machinery, tools, implements, fuel, or materials now owned or hereafter to be acquired by said defendant, The St. Paul and Pacific Railroad Company, for constructing, operating, repairing, or replacing the said railroads or either or of any part of either thereof, and of all the equipments or appurtenances of the said railroads or of either or any part of either thereof, and of all property, rights, franchises, and privileges whatsoever appertaining to the said railroads or to either or any part of either thereof now held or hereafter to be acquired by said defendant, The St. Paul and Pacific Railroad Company, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging to or in anywise appertaining, and also of all the estate, right, title, interest, property, possession, claim, and demand

whatsoever, as well *as* in law as in equity, of the said defend-
871 ant, The St. Paul and Pacific Railroad Company, in, to, and concerning the said railroads and every part and parcel thereof, with the powers and duties hereinafter expressed.

And the said receiver is hereby authorized and directed forthwith to take possession of all and singular the aforesaid property and to proceed without delay to construct and complete the unconstructed portions of said railroads and to put those portions thereof already constructed or partly constructed in good order to be operated as railroads, and to do the same, if practicable, by or before the 3d day of December next.

And he is further authorized and directed to do and perform all acts and things necessary to be done and performed to vest and secure in said railroad company the title to all lands granted or intended to be granted by any acts of Congress or of the Legislature of the State of Minnesota to the said railroad company.

And for such purpose the said receiver is hereby authorized and directed to borrow, on the terms as to the time of payment and rates of interest set forth in the following form of debenture, a sum of money, not exceeding five million dollars, as shall be necessary to complete and equip said railroads so as to secure said lands as herein directed, and to issue to the person or persons advancing said sums of money his debentures or certificates, with coupons or interest warrants attached, signed by him, expressing the amounts so advanced and the terms upon which the same shall be advanced, which debentures or certificates shall be in the form following:

Five years after date, unless sooner paid, for value received,
872 I promise to pay to —— —— or his assigns the sum of —— dollars, in gold, with interest thereon at the rate of ten per centum per annum, payable in gold semi-annually on the first days of January and July of each year, at the city of New York.

This obligation is issued under and by virtue of certain provisions of an order of the circuit court of the United States for the district of Minnesota, dated on the — day of ——, 1873, a copy of which is endorsed hereon, and is part of the loan thereby authorized to be made by me as receiver of the St. Paul and Pacific Railroad Company, amounting in all to the sum of five million dollars.

The said loan or so much thereof as may be required to complete the construction of the St. Paul and Pacific railroad and shall be borrowed by me for that purpose under the authority aforesaid is made and constituted, as provided in the order of the court, a first lien upon all the property, of every nature and description, of the said railroad company, and the earnings of said railroad, after deducting the operating expenses and the expenses of the receivership, are pledged for the payment of the principal and interest of this obligation, according to the tenor hereof.

Failure to pay interest for six months will make the principal due at option of holder.

—— ——, *Receiver.*

(Interest coupons annexed.)

Until further order of the court said debentures shall not be sold for less than par in the currency of the United States, and before any shall be sold the receiver must be satisfied that he can sell or place sufficient thereof to complete and equip the said road or some one or more of the unconstructed intervals within the line thereof.

873 And it is hereby further ordered, adjudged, and decreed that such debentures or certificates shall be, and they are hereby, adjudged to be a lien for the principal and interest thereof upon all the lands, premises, and property hereinbefore mentioned, prior to all other liens or claims thereon whatsoever; and the defendant, The St. Paul and Pacific Railroad Company, is hereby ordered, adjudged, and decreed to pay the principal and interest mentioned in such debentures or certificates at the times and according to the terms thereof, and in case of failure of said company at any time to pay the interest or principal of such debentures or certificates, according to the terms thereof, any holder or any number of holders of such debentures or certificates may institute and prosecute a suit in his or their name or names, on behalf of himself or themselves and all others, the holders of such debentures or certificates, to enforce the lien and compel payment thereof.

And the said receiver is authorized to purchase all necessary material, to employ all necessary agents and servants, and to make all contracts necessary for the purposes aforesaid.

And the defendants and each of them, having in their, his, or its possession or under their, his, or its control any of the property hereinbefore mentioned, are hereby ordered forthwith, upon the demand of said receiver, to deliver the same into the possession of said receiver.

And the defendants and each of them and their, his, or its officers, agents, attorneys, servants, are hereby strictly enjoined and commanded absolutely to refrain from interfering with the

874 said lands, premises, and property or any part thereof, and from in any manner interfering with the said receiver in the performance by him of the acts which he is hereby directed to perform. This injunction shall not be construed to prohibit the officers of the St. Paul and Pacific Railroad Company from taking any steps necessary to secure to said company titles to lands granted to it, nor to prevent the Northern Pacific Railroad Company asserting before the Departments at Washington or in any court its right to any lands granted to it.

And it is further ordered that said receiver, before entering upon the duties of his office, take and file with the clerk an oath to faithfully perform the duties thereof, and also file with the clerk a bond, with two or more sureties, to be approved by the judge of the district court of the United States for the district of Minnesota, in the sum of one hundred thousand dollars ($100,000), conditioned for the faithful performance of such duties.

That said receiver deposit all moneys coming into his hands in the registry of the court in St. Paul, and said money shall be paid out under the rules of the court.

That said receiver, after assuming the duties of his office, make and file with the clerk on the first day of each month a full statement of the business of his office during the preceding month.

The main object of this order is to ensure the completion of the said roads by the third day of December next, and the receiver is instructed so to act under the limitations aforesaid as to see that this object shall be accomplished, and to proceed at once and with expedition.

The receiver shall repair at once to St. Paul and proceed
875 to the discharge of his duties thereunder without delay, and act with expedition.

All contracts for construction or purchase of iron to be approved by the court or by one of the judges thereof.

It is the intention of the foregoing order that if the said five million dollars or so much thereof as may be required to fully complete said extension lines shall be furnished to or borrowed by the receiver, to give to the holders of the said receiver's debentures a first lien upon the said road, road-bed, franchises, and lands and each and every part thereof and the income and earnings of said road, as specified in the above order. If, however, the receiver shall borrow, upon the said debentures herein authorized, money sufficient to complete only some one or more of the unconstructed intervals in the line of said road, it is the intention of this order to give to the holders of the said debentures a first lien upon the road and road-bed so completed and the franchises of the company pertaining thereto and all the lands to which the said company may be entitled or may acquire by virtue of the completion of the said part or parts of said road; and if any of the money so borrowed by the said receiver on the said debentures shall be used for finishing or putting in order any part of said road now ironed, the same to the extent thus used shall be a first lien on the part or parts of said road upon which it is used. All other matters are continued until the first Monday in September next.

Given under my hand August 1, 1873.

JOHN F. DILLON, *Judge.*

876 Circuit Court of the United States, District of Minnesota
In Equity.

JOHN S. KENNEDY and Others, Complainants,
vs.
THE NORTHERN PACIFIC RAILROAD CO., THE ST. PAUL AND PACIFIC Railroad Co., The First Division of the St. Paul and Pacific Railroad Co., Walter L. Cutting, Russel Sage, Samuel J. Tilden, Edmund Rice, Horace Thompson, Geo. T. M. Davis, John P. Yelverton, Wm. Morehead, and Geo. L. Becker, Defendants.

The original order appointing Jesse P. Farley, receiver, herein having been made on the 1st day of August, 1873, and dated of that date and filed herewith, and the matter contained in and by said order coming on again before the court, at the chambers of the Hon. J. F. Dillon, thereof, at Davenport, Iowa, on the 1st day of Sep-

tember, 1873, and having heard Geo. L. Otis, of counsel for said complainants, and Horace Bigelow, Esq., of counsel for The First Division of the St. Paul and Pacific Railroad Co., Geo. L. Becker, and others, defendants herein, and on motion of Mr. Otis, of complainants' counsel, it is hereby further ordered that the aforesaid order appointing a receiver herein as aforesaid be, and the same is hereby, modified as follows, viz:

First. After the word "thereof," in line 7 of folio 13, insert the words "or such portions of one or more of such unconstructed intervals as he may deem practicable," so that said clause shall read as follows, viz:

"Until further order of the court, said debenture shall not
877 be sold for less than par in the currency of the United States, and before any shall be sold the receiver must be satisfied that he can sell or place sufficient thereof to complete and equip the said road or some one or more of the unconstructed intervals in the line thereof or such portions of one or more of such unconstructed intervals as he may deem practicable."

Second. In case the whole interval between a point at or near Melrose and a point about twelve miles south of Glyndon shall be so constructed and equipped and the portion of the road belonging to said St. Vincent Extension which is now ironed shall be completed by the 3d day of December, 1873, then the expense of so constructing, completing, and equipping the same shall be a first lien on the line of the said St. Vincent Extension, its road, lands, land grants, franchises, and property from St. Cloud to the end of the present construction at a point about 92 miles north of Glyndon.

Third. In case the whole of the Brainerd Extension, so called, to wit, the line between Watab and Brainerd, shall be so constructed and equipped by the said 3d day of December, 1873, then the expense of so constructing and equipping the same shall be a first lien upon the whole of said extension line, its road, land, land grants, franchises, and property.

Fourth. All the expense of completing and equipping the portions of said extension lines already ironed, except in the case provided for in subdivision two, shall be a first lien upon the portions so completed and equipped.

Fifth. The expense of all construction of any portion of said lines or either of them, other than construction upon some inter-
878 val to be fully completed as aforesaid, shall be a first lien upon that portion of the road so constructed and upon all the land, land grants, franchises, and property of such constructed portion or portions.

Sixth. The bond of said receiver may be approved by either the judge of the said district court or by the judge of this court.

Seventh. All further and other matters are continued until the first Monday of October next.

JOHN F. DILLON,
Circuit Judge.

Dated September 1, 1873.

EXHIBIT 48.

Resolved, That there be created and and issued under and pursuant to the act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved February 6, 1864, thirty thousand shares, three millions of dollars, of special and preferred stock upon that portion of the branch road of the company and the land grant appertaining thereto from Watab to St. Vincent, and that the holders of the same shall be entitled to have and receive all the net earnings and dividends of said portion of said branch road and all the proceeds of the lands pertaining thereto, and that certificates for said stock be issued by the executive officers of this company and delivered to our
879 president, Hon. Edmund Rice, to be negotiated and used by him as he shall deem best calculated to promote the interests of this company and secure the construction of said portion of road.

EXHIBIT 49.

Meeting of the stockholders of the St. Paul and Pacific R. R. Co.' at 120 Broadway, New York, December 13th, 1871, pursuant to adjournment from Nov. 16 ult.

The subject of the resolutions in regard to the St. Paul and Pacific Co. was discussed, and on account of the relations of this company to the Northern Pacific R. R. Co. it was deemed inexpedient to take action upon them without the advice and concurrence of that company, and on motion the meeting adjourned to January 9th, 1872, to meet with the directors of the Northern Pacific railroad.

WALTER HINCHMAN, *Secretary.*

EXHIBIT 50.

Map showing line of definite location of the St. Vincent Extension as made in the summer and fall of 1871, and in connection therewith the line of construction under said location upon the said line.

880 EXHIBIT 51.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *8th Oct.*, 1877.

I, C. Schurz, Secretary of the Interior, hereby certify that the paper numbered 1, hereto attached, is a true copy of the original now on file in this Department; has been compared therewith and found to be correct.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year above written.

[SEAL.]

C. SCHURZ,
Secretary of the Interior.

EBBITT HOUSE,
WASHINGTON, D. C., *November 18th*, 1871.

SIR: I have the honor to present herewith, on behalf of his excellency Horace Austin, Governor of the State of Minnesota, a map designating the route and location of the Saint Paul & Pacific railroad from a point at or near Saint Cloud to St. Vincent, in said State, in pursuance of the acts of Congress of March 3d, 1857, March 3d, 1865, and March 3d, 1871, granting lands to the Territory and State of Minnesota for railroad purposes, and authorizing the St. Paul & Pacific Railroad Company to change its lines in consideration of a relinquishment of lands; and I respectfully ask your approval
881 of said route and location and the withdrawal of the lands from market along said route, in accordance with the provisions of said act.

I have the honor to be, sir, with great respect,
Your obedient servant, EDMUND RICE,
President of the St. Paul & Pacific Railroad Company.

The Hon. C. Delano, Secretary of the Interior.

(Endorsements.)

Department of the Interior (St. Paul & Pac.).
Received 18 Nov., 1871.
Dated 18 Nov., 1871.
From Edmund Rice, president, Ebbitt House, Wash'n, D. C.
Subject.—Submits, on behalf of Gov. Austin, of Minn., a map designating the route and location of St. Paul & Pac. R. R. from a point at or near St. Cloud to St. Vincent, in Minn., in pursuance of the provisions of the acts of Congress of 3d March, '57, 3 March, '65, and 3 March, '71.
Action.—Filed with other papers in case by Mr. Sturgus.
Sent map to G. L. O. 20 Dec., '71.
Registered 1–361.
Filed.

The relinquishment and acceptance by Co. of the acts of Congress of 3 March, '71 (16 Stats., 588), not having been filed until 19 Dec., '71, the map mentioned on this brief should be considered as filed on same day, notwithstanding the fact of its previous receipt.

882 EXHIBIT 52.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *20th Dec.*, 1871.

SIR: I transmit herewith for appropriate action a map designating the route and location of the Saint Paul and Pacific railroad from a point at or near St. Cloud to St. Vincent, Minnesota, pursuant to the acts of 3d March, 1857, 3d March, 1865, and 3d March, 1871.

The last of these acts authorizes the company to change its line in consideration of a relinquishment of lands. Said relinquishment

was filed in this Department yesterday by Hon. B. F. Wade, agent and attorney for the company, and the map should be considered as filed at that date.

On first examination of said map I entertained doubts as to the conformity of the route therein shown with the requirements of said act of 1871, on account of its not intersecting the line of the original grant at or near Ottér Tail or Rush Lakes, the nearest point of the route, as amended, being some miles distant from either of said lakes; but further reflection has convinced me that the new route is a substantial compliance with the terms of the act.

Sufficient evidence has been filed in the Department to show that the change of line is in accord with the legislation of the State of Minnesota, as required by said act of 1871.

I am, sir, very resp., your ob't serv't,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen'l Land Office.

883 EXHIBIT 53.

Map showing the location of the St. Vincent Extension of the St. Paul and Pacific railroad.

STATE OF MINNESOTA, } *sct:*
County of Ramsey, }

Chas. A. F. Morris, of St. Paul, in said county and State, being duly sworn, deposeth and says that he is the chief engineer of the St. Paul and Pacific Railroad Company, and has been such chief engineer since the 14th day of May, 1871; that during the period above mentioned Wm. P. Payte, D. McKenzie, James D. Skinner, and R. B. Galloway were employed by this deponent, as chief engineer of the said railroad company, as deputy or division engineers. The said engineers, as shown by their field-notes, verified under oath, did actually survey and mark upon the ground the line or route of the railroad, commencing at a point at or near St. Cloud to a point at or near St. Vincent, in the sections and at the times respectively designated by dates, which are included between the flag-staffs upon and along the line of route of said railroad as delineated on the map showing the line of the public survey in connection with the surveyed line of the route, and that the acts of the said deputy or division engineers in the premises were duly approved and accepted on behalf of said company by this deponent as said chief engineer of the St. Paul and Pacific Railroad Company.

CHAS. A. F. MORRIS,
Chief Engineer.

884 Sworn and subscribed before me this 7th day of November, A. D. 1871.

[Notarial Seal, Ramsey Co., Minn.]

JAMES R. LUCAS,
Notary Public, Ramsey Co., Minn.

OFFICE OF THE ST. PAUL & PACIFIC RAILROAD COMPANY,
ST. PAUL, *November* 7, 1871.

It is hereby certified that in pursuance of the act of Congress, approved March 3, 1857, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," and by a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3d, 1865, and by a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March 3d, 1871—

This map shows, in connection with the public surveys, the actually surveyed line of that portion of said railroad which commences at a point on the branch line of the St. Paul & Pacific railroad at or near St. Cloud to a point at or near St. Vincent, as definitely fixed in compliance with the acts of Congress above referred to and in pursuance of the resolution of the board of directors of said railroad company passed on the 22d day of March, A. D.
885 1871, and that the dates of the field-work thereon are truly indicated along the line from station to station on this map.

In testimony whereof the St. Paul & Pacific Railroad Company has hereunto attached its corporate seal and caused the same to be signed by the president and chief engineer, at St. Paul, on the day and year first above written.

Attest:
[L. S.]

EDMUND RICE, *President.*
CHAS. A. F. MORRIS,
Chief Engineer.

WALTER HINCHMAN, *Secretary.*

EXECUTIVE OFFICE, STATE OF MINNESOTA.

I, Horace Austin, Governor of the State of Minnesota, do hereby certify that this plat or map of the St. Paul and Pacific Railroad Company has been duly filed in my office by said company, and shows the location of their line from a point at or near St. Cloud to a point at or near St. Vincent, as definitely fixed in compliance with the act of Congress, approved March 3d, 1857, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," and the acts amendatory thereof, and with the act of the Legislative Assembly of the Territory of Minnesota, approved May 22d, 1857, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Ter-

ritory of Minnesota in alternate sections to aid in the con-
886 struction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State,'" and granting certain lands to railroad companies therein named, and the acts amendatory thereof.

In testimony whereof I have hereunto set my hand and
[L. S.] caused to be affixed the great seal of the State of Minnesota.

Done at St. Paul this 7th day of November, A. D. 1871.

HORACE AUSTIN, *Governor.*

Attest: H. MATESON,
Secretary of State.

General Land Office, received with Secretary's letter of December 20th, 1871. (Rec'd Dec. 21, '71.)

"Saint Vincent Extension, St. Paul and Pacific R. R., received from Secretary with letter of 20th Dec., 1871.

"Withdrawal ordered Feb'y 6, 1872.

"Right of road attached Nov. 7, 1871.

"Order of withdrawal revoked by Secretary's letter of June 18, 1872 (K 2057), and our letters to the district officers of June 25, 1872.

"Again withdrawn by telegram September 3d, 1872.

"See vol. 12, p. 212, *et* register."

887 EXHIBIT 54.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *16th Oct.*, 1877.

I, A. Bell, acting Secretary of the Interior, hereby certify that the papers numbered 1 and 2, hereto attached, are true copies of the original now on file in this Department; have been compared therewith and found to be correct.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year above written.

[SEAL.] A. BELL,
Acting Secretary of the Interior.

One.

Resolved, That an act of Congress entitled An act authorizing the St. Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands, approved March 3d, 1871, be, and the same is hereby, accepted by this company, and that the location of the branch lines of the railroads which this company is by law authorized to construct be, and the same are, altered in conformity with the said act; and the president and secretary of this company are hereby authorized and directed to execute under the corporate seal thereof and deliver to the proper officers of the United States Government the releases of lands appertaining to the route

hereby abandoned mentioned in the said act of Congress as one of the conditions thereof, and generally to do every act and thing necessary or proper to secure to this company the benefit of the said act of Congress according to the terms thereof.

888 Resolved, That the following be adopted as the line upon which to construct the road, to wit: Commencing at a point at or near Crow Wing, thence following the general course of the Mississippi river, on the easterly side, to a junction with the Northern Pacific railroad, in the town of Brainerd, on the Mississippi river.

Also from a point in the line of the 1st Division of the St. Paul & Pacific R. R., near St. Cloud or Sauk Rapids, thence by the most direct and feasible route, via St. Cloud, to a point of junction with the Northern Pacific railroad at or near Otter Tail or Rush Lakes, and thence to St. Vincent on the boundary line of British America.

Resolved, That this company commence the surveys of said road, as defined in the foregoing resolution, and locate the same to Brainerd and to the point of intersection with the Northern Pacific railroad at or near Otter Tail or Rush Lakes, and thence to Saint Vincent at the earliest practicable moment and to prepare and file in the office of the Secretary of the Interior the maps and papers necessary to retire the lands granted by Congress, and that when said roads shall be surveyed and located that said First Division of the St. Paul & Pacific railroad, in pursuance of their said contract, be requested to proceed to construct said roads at the earliest possible period consistent with the finances of said company.

Passed March 22d, 1871.

Resolved, That the survey and location of the railroad of this company from St. Cloud to St. Vincent and from Crow Wing to Brainerd, made under the supervision of Chas. A. F. Morris,

889 chief engineer, be, and the same is hereby, approved and adopted, and that duplicate maps of such survey and location heretofore certified by him and by the president and secretary of this company, dated, respectively, November seventh and November twenty-second, 1871, be placed in the hands of the Governor of the State of Minnesota and the Secretary of the Interior, in compliance with the laws applicable thereto, and that said engineer's report of such location be recorded upon the books of this company.

Resolved, That the president and secretary be authorized to execute the following release to the United States:

Whereas by an act of Congress approved March third, A. D. 1871, entitled as follows: "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," the St. Paul and Pacific Railroad Company was authorized to alter its branch lines, the said act being in the following words:

(Here follows copy of act.)

And whereas the said St. Paul & Pacific Railroad Company on the 22d day of March, A. D. 1871, duly passed the following resolution:

(Here follows resolution first in order on this paper.)

Now, therefore, know all men by these presents the Saint Paul and Pacific Railroad Company, in consideration of the premises, hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, not including, however, in this release any lands granted by said act to said company along said new or altered lines.

Passed December 13th, 1871.

890 I certify that the above is a true copy from the records of the proceedings of the directors of the St. Paul & Pacific Railroad Company at meetings held March 22d, 1871, and December 13th, 1871.

[SEAL.] WALTER HINCHMAN, *Secretary.*

Two.

Whereas by an act of Congress approved March third, A. D. 1871, entitled as follows: "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," the St. Paul and Pacific Railroad Company was authorized to alter its branch lines, the said act being in the following words:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Saint Paul and Pacific Railroad Company may so alter its branch lines that instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior it may locate and construct in lieu thereof a line from Crow Wing to Brainerd to intersect with the Northern Pacific railroad and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines as is provided for the present lines by existing laws: Provided, however, That this change shall in no manner enlarge said grant, and that this act shall

891 only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to market without further legislation."

And whereas the said St. Paul and Pacific Railroad Company, on the 22d day of March, A. D. 1871, duly passed the following resolution:

"Resolved, That an act of Congress entitled 'An act authorizing the St. Paul and Pacific Railroad Company to change its lines in

consideration of a relinquishment of lands,' approved March 3d, 1871, be, and the same is hereby, accepted by this company, and that the location of the branch lines of the railroads which this company is by law authorized to construct be, and the same are, altered in conformity with the said act, and the president and secretary of this company are hereby authorized and directed to execute, under the corporate seal thereof, and deliver to the proper officers of the United States Government the releases of lands appertaining to the route hereby abandoned, mentioned in the said act of Congress as one of the conditions thereof, and generally to do every act and thing necessary or proper to secure to this company the benefit of the said act of Congress according to the terms thereof: "

Now, therefore, know all men by these presents the Saint Paul and Pacific Railroad Company, in consideration of the premises,
892 hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, not including, however, in this release any lands granted by said act to said company along said new or altered lines.

In witness whereof the said St. Paul and Pacific Railroad Company has caused its corporate seal to be hereunto affixed and the same to be attested by the signatures of its president and secretary this thirteenth day of December, A. D. 1871.

EDMUND RICE,
President of the St. Paul and Pacific Railroad Company.

[SEAL.] WALTER HINCHMAN,
Secretary St. Paul & Pacific R. R. Co.

Signed and sealed in presence of—
CHARLES NETTLETON.
WILLIAM H. CLARKSON.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this 13th day of December, A. D. 1871, before me, the undersigned, Charles Nettleton, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Minnesota to take the acknowledgments of deeds, &c., to be used or recorded therein, personally appeared Edmund Rice, the president of the Saint Paul and Pacific Railroad Company, and Walter
893 Hinchman, the secretary of the same company, who are to me personally known to be the same persons who executed the foregoing instrument as the president and secretary of said company; and the said Edmund Rice and Walter Hinchman, being by me duly sworn, did depose and say that he, the said Edmund Rice, resided in St. Paul, in the State of Minnesota; that he, the said Walter Hinchman, resided in the city, county, and State of New York; that they are the above-described officers of said company; that they knew the corporate seal of the said company; that the

seal affixed to the foregoing instrument is such corporate seal; that it was so affixed to the foregoing instrument by order of the board of directors of said company, and that they severally signed their names thereto by the like order as the president and secretary of said company, respectively; and the said Edmund Rice and Walter Hinchman also severally acknowledged to me that they executed the said instrument as their free and voluntary act and deed and the free and voluntary act and deed of the said Saint Paul and Pacific Railroad Company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Minnesota in New York
(117 *Broadway, New York*).

894 EXHIBIT 55.

(Copy.)

NORTHERN PACIFIC RAILROAD COMPANY,
TREASURER'S OFFICE, 120 BROADWAY,
NEW YORK, 31*st July*, 1872.

Honorable Columbus Delano, Secretary of the Interior, Washington, D. C.

SIR: In the matter of your revocation of the order withdrawing from sale certain lands for the use of the St. Vincent line of the St. Paul and Pacific Railroad Company, under act of Congress approved March 3, 1871, you kindly assented to my proposition that I should be heard upon the law in favor of the original withdrawal of the land.

By an understanding with Mr. Smith, the solicitor of the Department, the hearing was postponed until I could confer with certain other parties in interest who were to meet here on the 30th inst. The result of that conference is contained in a resolution passed by the board of directors of the Northern Pacific R. R. Co., of which I enclose a certified copy herewith.

We desire to be heard at an early day, and so soon as it can be ascertained what day will suit the convenience of the committee an appointment to meet in Washington will be made, of which Governor Smith will notify you.

895 I make this explanation to you that there may be no misapprehension from the delay in presenting the case, a delay which I regret but cannot avoid.

Yours respectfully, GEO. L. BECKER,
President of the First Division of the
St. Paul and Pacific R. R. Co.

Whereas a question has arisen in reference to the withdrawal of the lands of the St. Paul and Pacific railroad which causes the Secretary of the Interior to doubt the legality of his order withdrawing said lands from market; and whereas the Minneapolis and Saint

Cloud Railroad Company assert a claim to a portion of the lands which under the terms of the act of Congress the St. Paul and Pacific R. R. were required to release; and whereas it is believed by this board that the action of the Secretary in ordering said lands withdrawn is in conformity with the act of Congress of 1871, and that the release of the St. Paul and Pacific R. R. is a good and sufficient release; and whereas the subject is one of great importance to all interested, and it is proper that in the hearing now soon to be had before the Department of the Interior this company, in the just regard for its interest in the said St. Paul and Pacific R. R., should be properly represented: Therefore

Resolved, That the president, vice-president, Messrs. Billings and Windom, be a committee to represent the interests of this company before the Department, at Washington, and in conjunction
896 with the counsel of this company, the Hon. B. F. Wade, to co-operate with Hon. Geo. L. Becker, president of the St. Paul and Pacific R. R., First Division, in sustaining the order of withdrawal of said lands heretofore made by said Department.

I certify that the foregoing is a true copy of a resolution passed at a meeting of the board of directors of the Northern Pacific Railroad Company held July 31st, 1872.

[Seal of Nor. P. R. R. Co.]

(Signed) SAM'L WILKESON,
Secretary N. P. R. R. Co.

EXHIBIT 56.

(Copy.)

WASHINGTON, D. C., *June* 9, 1873.

Hon. C. Delano, Secretary of the Interior.

SIR: I have the honor to submit herewith for approval list No. 1 of selections in the "Oak Lake" district, Minnesota, embracing 1,920 acres, which, in accordance with your decision of 13th ult., inure under acts of 3d March, 1857, March 3, 1865, July 13, 1866, and March 3, 1871, to the State for the "St. Paul & Pacific railroad," "St. Vincent" Extension.

I am, sir, very respectfully,

(Signed) W. W. CURTIS, *Act'g Com.*

897 EXHIBIT 57.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *3d Sept.*, 1872.

SIR: Referring to the departmental letter to your office of the 18th June last, in which any order withdrawing lands for the St. Paul & Pacific railroad was revoked, I have now to direct you to rescind said order of revocation and restore the withdrawal, with the distinct understanding, however, that this is not to be regarded

as a decision on the merits of the case, all questions as to the right of the road to the lands being reserved for further consideration.

Very respectfully, your obedient servant,

W. H. SMITH,
Acting Secretary.

Hon. Willis Drummond, Com'r General Land Office.

EXHIBIT 58.

(Copy.)

SAINT PAUL, *Oct. 21st*, 1873.

Hon. Columbus Delano, Secretary of the Interior, Washington, D. C.

DEAR SIR: For some time previous to the 15th day of May last a large amount of lands lying in this State were in contro-
898 versy between the St. Paul and Pacific and the North Pacific Railroad Companies, but on that day the controversy was brought to a conclusion, as you are aware, by your official decision adverse to the claims of the Northern Pacific Railroad Co. and the lands in controversy "awarded to the St. Paul and Pacific upon her showing that she has fully complied with the laws in the construction of the road." I am now officially informed by Hon. J. P. Farley, receiver of the St. Paul and Pacific, that he is now constructing and has nearly completed one hundred and forty (140) miles of the St. Vincent Extension of said road, and to which said disputed lands are contiguous and do attach; that he will soon apply to this office to have said road, now under construction, accepted as completed according to law and to have the same certified by the Governor to the Secretary of the Interior; that he has made application to the local land office at Oak Lake, in which district said lands are situated, for the privilege of selecting said lands as belonging to that part or portion of said road by him soon to be completed, and asked the officers of said land office to certify said lands to said company, but that they refuse to do so for the reason that they have already certified them to the Northern Pacific. The State of Minnesota is largely interested in the construction and completion of the St. Vincent Branch of the St. P. & P., lying, as it does, wholly within her borders, and it is almost certain that it cannot be built without the aid of all the lands which Congress has dedicated to that object. Hence, on the part of the State I desire to enter a protest against the action of said officers as calculated to hazard and delay the construction of said branch, and therefore most respectfully ask that said land officers be by you instructed to can-
899 cel the certification on their official records of said lands to the Northern Pacific R. R. Co. and restore them to a condition that will allow of their selection and certification to the St. Paul and Pacific.

Very respectfully, your obedient servant,

(Signed) HORACE AUSTIN, *Governor.*

EXHIBIT 59.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 18*th Oct.*, 1877.

I, C. Schurz, Secretary of the Interior, hereby certify that the paper numbered —, hereto attached, is a true copy of records of this Department, has been compared herewith, and found to be correct.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year above written.

[SEAL.]

C. SCHURZ,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *4th December*, 1873.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ult., transmitting three maps of certain portions of the St. Vincent Branch of the St. Paul & Pacific railroad, showing the road as completed from a point in section 35, t'p 138,
900 R. 46, being 12 miles south of the crossing of the N. P. R. R., to a point 50 miles north thereof, in section 32, t'p 146, R. 46; from East St. Cloud, in Sherburne Co., at a point where said road joins the branch line of the 1st Division of the St. Paul and Pacific R. R., to Melrose, in Stearns Co., 35 miles, and from a point in section 32, t'p 146, R. 46, to a point 55 miles north thereof, in section 7, t'p 154, R. 47.

These maps have to-day been sent to the General Land Office.

Very respectfully, your ob't servant,

C. DELANO, *Secretary.*

His excellency Horace Austin, Governor of Minn., St. Paul.

EXHIBITS 60, 61, AND 62.

Certified copies of maps, with the indorsements thereon, from the office of the auditor of the State of Minnesota; Exhibit "60" showing the construction of 35 miles of railroad, to Melrose; Exhibit "61" showing the construction of road from the point 12 miles south of Glyndon to a point 50 miles north thereof; Exhibit "62" showing the construction of 55 miles of road north of said 50 miles.

901 EXHIBIT 63.

Copy of duplicate of Exhibit "62," filed in General Land Office, at Washington, with indorsements thereon.

EXHIBIT 64.

Copy of duplicate of Exhibit "60," filed in the General Land Office, at Washington, with indorsements thereon.

EXHIBIT 65.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *October* 18, 1877.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the records of this office show that under date of December 4, 1873, there were received from the honorable Secretary of the Interior three maps showing portions of the Saint Vincent Extension of the Saint Paul and Pacific railroad as constructed and equipped, being as follows, to wit:

First. From a point in section 35, township 138 north, of range 46 west, being twelve miles south of the Northern Pacific railroad crossing to a point fifty miles north thereof, in section 32, township 146 north, of range 46 west, in Minnesota.

902 Second. From East Saint Cloud to Melrose, in Stearns county, a distance of 35 miles.

Third. From a point in section 32, township 154 north of range 47 west.

These maps were sworn to and subscribed by the chief engineer of the company November 18, 1873, and were certified by the Governor of Minnesota November 22, 1873.

I do further certify that on the 12th instant the company, by its attorney, Wm. T. Steiger, Esq., applied for a certified copy of the map first above described; that during the confusion incident to the recent conflagration in the building wherein this office is located the said first-described map was lost or mislaid and after diligent search has not been found.

And I do further certify that the said last two described maps now on file bear, besides the line of the road, the following certificates and endorsements, viz:

"Construction map of part of the St. Vincent Branch, St. Paul and Pacific railroad, from" (here are stated the points of beginning and ending.)

"STATE OF MINNESOTA, }
County of Ramsey, } ss:

"Charles A. F. Morris, of St. Paul, in said county and State, being duly sworn, deposeth and says that he is the chief engineer of the St. Paul and Pacific Railroad Company; that the St. Vincent Extension of said railroad from" (here is described the point of beginning and the terminus of the constructed part), "as shown by this line of route in connection with the lines of the public surveys on this map, has been completed and equipped as required by

903 law, and that this line of route shows the correct location of the railroad.

"CHAS. A. F. MORRIS,
"*Chief Engineer.*"

"Sworn and subscribed this eighteenth day of November, 1873, before me—

"JAMES N. GRANGER,
Notary Public, Minn."

"[NOTARIAL SEAL.]

"It is hereby certified that Charles A. F. Morris is the chief engineer of the St. Paul and Pacific Railroad Company, and that the St. Vincent Extension of the road, as represented on this map, is correct and approved by the company, and also that the road has been completed and equipped in all respects as required by law.

"J. P. FARLEY, *Receiver.*"

"Attest: JAMES N. GRANGER.
"JAMES F. O'BRIEN."

"EXECUTIVE OFFICE, STATE OF MINNESOTA, ST. PAUL.

"I, Horace Austin, Governor of the State of Minnesota, do hereby certify that this plat or map of the St. Paul and Pacific railroad has been duly filed in my office by the St. Paul and Pacific Railroad Company, through J. P. Farley, receiver thereof, and shows that portion of said railroad from a point" (here is described the
904 beginning and terminus of the section), "as shown on this map, in connection with the lines of the public surveys, which has been completed and equipped as required under and by virtue of the acts of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory,' approved on the 3d day of March, 1857; also 'An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes,' approved on the 3d day of March, 1865;' also 'An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands,' approved March 3d, 1871.

"In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

"Done at St. Paul this 22d day of November, 1873.

"By the Governor:

"HORACE AUSTIN, *Governor.*

"S. P. JENNISON,
"*Secretary of State.*"

[Great Seal of Minnesota.]

Endorsed: "St. Paul & Pacific R. R., St. Vincent Extension. Map showing" (here follows description of map, &c.). "Received at G. L. O. with Secretary's letter of December 4th, 1873." (K. 78216.)

And I do further certify that I believe that the map first above described, which cannot now be found, bore certificates and
905 endorsements similar to those above set forth, and that it showed the construction and equipment of said road as hereinbefore stated.

In testimony whereof I have hereunto subscribed my name and

caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner General Land Office.

EXHIBIT 66.

Extension Mortgage.

This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, between the Saint Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and Horace Thompson and George L. Becker, of Saint Paul, in the said State, and William G. Moorhead, of Philadelphia, in the State of Pennsylvania, of the second part.

Whereas the said St. Paul and Pacific Railroad Company is a corporation of the State of Minnesota, duly created and organized under the laws thereof, and particularly under a certain act of the Legislature of said State entitled "An act to facilitate the construction of the Minnesota and Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof or relating to the railroad therein described, approved, respectively, February 6th, 1864, March 4th, 1864, and March 2d, 1865;

906 And whereas the said company is duly authorized and empowered by law to construct, maintain, and operate the railroads in the said State of Minnesota hereinafter mentioned and described as the branch lines of the Saint Paul and Pacific railroad, to be constructed from Saint Cloud to Saint Vincent and from Watab to Brainerd, in the said State, and for the construction, maintenance, and equipment thereof to borrow money and enter into any and all agreements and assume any and all liabilities which it may deem proper, and particularly to execute, acknowledge, and deliver a deed of trust or mortgage upon the said branch lines of railroad and the land grants connected therewith in the manner and form of this indenture;

And whereas the Congress of the United States, heretofore, to wit, by a certain act thereof entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and by a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3d, 1865, granted to the said State of Minnesota certain lands for the purpose of aiding in the construction of railroads from Saint Cloud aforesaid by way of Crow Wing to Saint Vincent aforesaid, and also from Saint Cloud to the waters of Lake Superior;

And whereas the said State of Minnesota, by the legislative acts thereof aforesaid, granted the said lands, applicable to the
907 construction of said railroads from Saint Cloud to Saint Vincent and from Saint Cloud to the waters of Lake Superior, to the said Saint Paul and Pacific Railroad Company, as by reference to said legislative acts will more fully and at large appear;

And whereas the Congress of the United States aforesaid, by another act thereof, to wit, an act entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3d, 1871, enacted and declared "that the Saint Paul and Pacific Railroad Company may so alter its branch lines that instead of constructing roads from Crow Wing to Saint Vincent and from Saint Cloud to the waters of Lake Superior it may locate and construct, in lieu thereof, a line from Crow Wing to Brainerd to intersect with the Northern Pacific railroad and from Saint Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of land, to be taken in the same manner along the said altered line as is provided for the present lines by existing law: Provided, however, That this change shall in no manner enlarge said grant, and that this act shall only take effect upon the condition of being in accord with the Legislature of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned line from Crow Wing to Saint Vincent and from Saint Cloud to Lake Superior, and that upon the execution of said releases such land so released shall be considered as immediately restored to market without further legislation;"

And whereas the act of said Congress last aforesaid was in
908 conformity with the legislation of the State of Minnesota, and particularly with the act thereof aforesaid approved February 6th, 1864;

And whereas the said company has duly accepted the act of Congress last aforesaid and duly resolved to alter and relocate its branch lines of railroad as therein provided, and to execute and deliver the releases of the lands along said abandoned route therein mentioned;

And whereas the said party of the first part has entered into a certain contract, bearing even date herewith, for the construction and equipment of said railroads from Saint Cloud to Saint Vincent and Watab to Brainerd with a certain other company of the State of Minnesota, known as the First Division of the Saint Paul and Pacific Railroad Company, being a corporation created and organized under an act of the Legislature of said State entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved February 6th, 1864, and in and by such contract the last-mentioned company has agreed to loan and advance to the said party of the first part or for its use and benefit in the construction and equipment of said railroad the sum of fifteen millions of dollars in bonds of the said company, payable and secured to be paid as

hereinafter described; and the said party of the first part has agreed to assume and secure the payment of the said bonds according to the terms thereof;

And whereas, pursuant to such construction contract and in due conformity therewith, the said First Division of the Saint Paul and Pacific Railroad Company has duly resolved to execute and issue its certain bonds or obligations of one thousand dollars each,
909 payable to the said parties of the second part thereto, as trustees, or to bearer, on the first day of January, in the year of our Lord one thousand nine hundred and one, and bearing interest at the rate of seven per centum per annum, payable semi-annually on the first days of January and July in each year in the lawful money of the United States, if demanded in New York, or in British pounds sterling, at the rate of four shillings British money per dollar, if demanded in London, at the option of the holder;

And whereas the said bonds or as many thereof as may be necessary are to be issued and negotiated for the purpose of procuring means to construct and equip the said lines of railroad, and are to be equally and ratably secured hereby without discrimination or preference between them on account of the times of actual issue or negotiation; and whereas the said bonds are all of like tenor and date and in the form following:

UNITED STATES OF AMERICA. $1,000. STATE OF MINNESOTA.

(Vignette.) (Vignette.)

First-Mortgage Bond upon 348 *Miles of Railroad and* 2,217,200 *Acres of Land.*

No. —.

Issued by the First Division of the St. Paul and Pacific Railroad Company to construct roads from St. Cloud to St. Vincent and from Watab to Brainerd.

910 Know all men by these presents that the First Division of the St. Paul and Pacific Railroad Company is indebted to Horace Thompson and George L. Becker, of St. Paul, and William G. Moorhead, of Philadelphia, trustees, or bearer in the sum of one thousand dollars, lawful money of the United States of America; which said sum the said company hereby promises to pay to the said trustees or to the bearer hereof on the first day of January, in the year one thousand nine hundred and one, in the lawful money aforesaid, at its office or agency in the city of New York, or in British pounds sterling, at the rate of four shillings per dollar, at the agency of the said company in the city of London, England, at the option of the holder, with interest on the said principal sum at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, in the lawful money aforesaid, on presentation and surrender of the coupons hereto annexed as they severally become due at the said office or agency in New York, or payable in British pounds sterling, at the rate of four shil-

lings for each dollar, on presentation and surrender of such coupons, respectively, at the banking-house of Robert Benson & Co., in London, England, at the option of the holder; which payment of interest shall in all cases be made without deduction or abatement of any income or other tax imposed or to be imposed by the Government of the United States or any law thereof and which the said company lawfully might deduct from such interest to pay over to any officer of said Government, it being understood that such taxes are to be paid by the said company in addition to such interest; and it is hereby expressly declared and agreed that in case default
911 shall be made in the payment as aforesaid of any semi-annual installment of interest on this bond and such installment of interest shall remain unpaid and in arrear for the period of six months after the same shall have become due and been demanded, the principal of this bond, as well as of all the bonds of the series of which this is one, shall become and be due and payable immediately, but subject, nevertheless, to the provisions in that behalf of the deed of trust or mortgage hereinafter mentioned.

This bond is one of a series of fifteen thousand bonds of like tenor and date, numbered consecutively from 1 to 15000, inclusively, and amounting in the aggregate to fifteen millions of dollars and the payment of the principal and interest whereof is secured by a certain deed of trust or mortgage, bearing even date herewith, duly executed and delivered by the Saint Paul and Pacific Railroad Company (being the corporation owning the railroad for the construction of which these bonds are issued) to the said Horace Thompson, George L. Becker, and William G. Moorhead, trustees, and which conveys to the said trustees certain railroads which the said Saint Paul and Pacific Railroad Company is authorized to construct and operate in the said State of Minnesota, to wit, a railroad from, at, or near Saint Cloud to Saint Vincent, being a distance of two hundred and ninety-three (293) miles, more or less, and a railroad from Watab to Brainerd, being a distance of fifty-five (55) miles, more or less, together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and franchises thereunto respectively appertaining, and which conveys also to the said trustees all the right, title, and interest which the company last aforesaid now has or shall or may hereafter acquire by the
912 construction of said railroad or any part thereof or otherwise in, to, or concerning certain lands situate in the said State which were heretofore granted by the Congress of the United States to aid in the construction of such railroads by acts of the said Congress approved, respectively, March 3d, 1857, March 3d, 1865, and March 3d, 1871, the extent and aggregate area of such lands to which said company will become entitled by the construction of said railroads under existing legislation being estimated at two million two hundred and seventeen thousand and two hundred (2,217,200) acres, more or less.

This bond shall pass by delivery, unless registered in the name of the owner on the books of the company in New York or London, but after a registration of ownership, certified hereon by the trans-

fer agent or officer of the company, no transfer hereof, except upon the books of the company, shall be valid unless the last preceding transfer shall have been to bearer; but this bond shall continue subject to successive registration of ownership and transfers to bearer, at the option of each holder.

This bond is made, by the terms of the deed of trust or mortgage aforesaid, receivable at par in payment for any and all lands embraced in said deed which may be sold by the said Saint Paul and Pacific Railroad Company in conformity therewith. This bond shall not become valid or obligatory until authenticated by a certificate endorsed hereon and duly signed by the trustees under said deed.

In witness whereof the said company has caused its corporate seal to be hereunto affixed and the same to be attested by the signatures of its president and secretary, and has likewise caused the
913 coupons hereto annexed to be signed by its secretary, this first day of April, one thousand eight hundred and seventy-one.

—— ——, *President.*

—— ——, *Secretary.*

Now, therefore, this indenture witnesseth: That the Saint Paul and Pacific Railroad Company aforesaid, being the party of the first part hereto, in consideration of the premises and of the sum of one dollar to the said company duly paid at or before the ensealing and delivery of these presents by the said parties of the second part, the receipt whereof is hereby acknowledged, has promised and agreed, and by these presents does promise and agree, to and with the said parties of the second parties, for the benefit of any and all persons who shall or may become holders for value of the bonds aforesaid or any of them or of any coupons thereunto annexed, that the said Saint Paul and Pacific Company, its successors or assigns, shall and will well and truly pay the said bonds and each of them and all interest to accrue upon the said bonds or any of them when the same shall become due or cause the same to be paid unto the parties entitled thereto, according to the tenor of said bonds, respectively, and of the respective coupons thereunto annexed; but nothing herein contained shall impair or in any manner whatsoever affect the liability of the First Division of the Saint Paul and Pacific Railroad Company upon the said bonds and coupons to the holders thereof.

And this indenture further witnesseth: That for and in consideration of the premises and of the sum of one dollar
914 to it duly paid as aforesaid the said party of the first part to these presents, in order the better to secure the payment of the principal of the said bonds and all interest thereon as the same shall become payable, according to the tenor of said bonds and the terms of the coupons thereto respectively annexed, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer, unto the said parties of the second part, as joint tenants and not as tenants in common, and to the survivors and survivor of the said parties of the second part and the heirs and assigns of such survivor all and singular that certain branch line of

railroad of the said party of the first part or which the said party of the first part is authorized to construct and which is to be constructed and run from some point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Pembina and State of Minnesota, being a distance of two hundred and ninety-three (293) miles, more or less; and also all and singular that certain other line of railroad of the said party of the first part or which the said party of the first part is authorized by law to construct and which is to be constructed and run from Watab, in the county of Benton, by way of Crow Wing, to Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad, being a distance of fifty-five (55) miles, more or less, as contemplated by the said act of Congress, approved March 3d, 1871; together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and franchises thereunto respectively belonging or in anywise appertaining or which shall or may at any time hereafter — thereunto belonging or in anywise appertaining;

915 And also all right, title, and interest which said party of the first part now has and all right, title, and interest which the said party of the first part, its successors or assigns, shall or may at any time hereafter acquire by reason of the construction of said railroads or of either or of any part of either thereof or otherwise in, to, or concerning the lands situate, lying, and being in the State of Minnesota which are embraced or intended to be embraced in the grants aforesaid or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of said Congress hereinbefore mentioned or either of them, and which have been granted by said State to the party of the first part or shall or may be granted or conveyed to the said party of the first part, its successors or assigns, to aid in the construction of the said lines of railroad or of either or of any part of either thereof, including in the premises hereby conveyed and it being the true intent of these presents to convey the road-beds of the said railroads, respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops and other shops, and all other structures, buildings, and materials whatsoever, placed and to be placed on the said railroads, respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools, and implements, fuel and materials, for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments

916 or appurtenances of the said railroads or of either or any part of either thereof now held by the said party of the first part or hereafter to be acquired by the said party of the first part, its successors or assigns; together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertain-

ing, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part in, to, and concerning the same and each and every part and parcel thereof, with the appurtenances:

To have and to hold the said railroads, lands, and premises unto the said parties of the second part as joint tenants and not as tenants in common and unto the survivors and survivor of the said parties of the second part and the heirs and assigns of such survivor forever; but in trust, nevertheless, to and for the uses and purposes and with the powers and authorities hereinafter mentioned and set forth, that is to say—

Article first. Until default shall be made by the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, in the payment of either the principal or interest of the said bonds or some one of them, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said railroads respectively, with the equipments and appurtenances thereof and the franchises appertaining thereto, and to receive, take, and apply to its and their
917 own use the tolls, incomes, revenues, rents, issues, and profits thereof in the same manner and with the same effect as if this deed had not been made.

Article second. In case default shall be made in the payment of any interest to accrue on any of the aforesaid bonds issued or to be issued by the First Division of the Saint Paul and Pacific Railroad Company when such interest shall become payable according to the tenor of such bond or the terms of any coupon thereto annexed, and such default shall continue for the period of three months, or in case default shall be made in the payment of the principal of any of said bonds, or in case default shall be made in the observance or performance of any other matter or thing in these presents mentioned and agreed or required to be observed and performed by the party of the first part, its successors or assigns, or by the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, and such default shall continue for the period of six months, then and from thenceforth and in either of such cases it shall be lawful for the said parties of the second part, being the trustees under these presents, or for the survivor or survivors of said trustees or their or his successors or successor, personally or by their or his attorneys or agents to enter into and upon all and singular the railroads and premises hereby conveyed or intended so to be or any part thereof, and from thenceforth to have, hold, possess, and use the said railroads and premises and each and every part and parcel thereof then subject to the lien of these presents, operating and conducting the business of the said railroads respectively by their or his superintendents, managers, receivers, and servants or other attorneys or agents,
918 and making from time to time all repairs and replacements and such useful alterations, additions, and improvements thereto as may seem to them or him to be judicious, and to collect and receive all tolls, fares, freights, incomes, rents, issues, and profits

of the same and of every part thereof, and after deducting the expenses of operating the said railroads respectively and conducting the business thereof and of all the said repairs, replacements, alterations, additions, and improvements and all payments which may be made or may be due for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises or any part thereof, as well as just compensation for their or his own services and for the services of such attorneys and counsel as shall have been by him or them employed, to apply the moneys arising as aforesaid to the payment of interest on the said bonds in the order in which such interest shall have become and shall become due ratably to the persons holding the coupons evidencing the right to such interest; and if after paying in full the interest which shall have accrued on the said bonds a surplus of the moneys arising as aforesaid shall remain and the principal of said bonds shall not be due nor such surplus or any part thereof required, in the judgment of said trustees, for the protection of the property or to provide for the installment of interest next thereafter to fall due, the same shall be paid over to the said party of the first part, but in case the principal of said bonds or any of them shall have become due the surplus arising as aforesaid shall be reserved to be applied to the payment of said bonds upon the sale of the said railroad and premises, as provided in the next following article of these presents.

919 Article third. In case default shall be made in payment of interest on said bonds or any of them as aforesaid and shall continue as aforesaid, or in case default shall be made in the payment of the principal or any part thereof of the said bonds or any of them, it shall be lawful for the said trustees or for the survivors or survivor of the said trustees, or for their or his successor or successors in the trust by these presents created, to enter into and upon all and singular the railroads and premises aforesaid, and after such entry or after other entry or without entry, personally or by their or his attorneys or agents, to sell and dispose of the said railroads and of all and singular the property, rights, and franchises hereinbefore conveyed or intended so to be, and which shall be then subject to the lien of these presents, at public auction either in the city of New York or the city of St. Paul aforesaid, or at such place along the line of either of said railroads and within the State of Minnesota as the said trustees or the survivors or survivor of them, or their or his successors or successor in said trust, shall designate, and at such time as they or he shall appoint, having first given notice of the time and place of such sale by advertisement published not less than three times a week for six successive weeks in one or more newspapers in the city of New York, and also published not less than three times in each week for six weeks in one or more newspapers in the city of St. Paul, and also in the city of London, and after such notice it shall be lawful for the said trustees or trustee to make such sale or to adjourn the said sale from time to time in their or his discretion, and if so adjourning to make the same without

further notice at the time and place to which the same may
920 be so adjourned, and to make and deliver to the purchaser or purchasers of the said railroad, lands, and premises or any part thereof good or sufficient deed or deeds in the law for the same in fee simple, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and all other persons claiming or to claim the said premises or any part or parcel thereof by, from, through, or under the said party of the first part, its successors or assigns; and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or trustee in operating or maintaining the said railroads and premises or in managing the business thereof, it shall be lawful for the said trustees or trustee and it shall be their or his duty to apply the residue of the moneys arising from such sale to the payment of the principal and accrued and unpaid interest on all the said bonds which shall then be outstanding, without discrimination or preference as between principal and accrued and unpaid interest, or as between the holders of said bonds or of any coupons issued therewith, but equally and ratably to all such bond and coupon holders.

And it is hereby declared and agreed that the receipt of the said trustees shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that after payment of such purchase-money and having such receipt the said purchaser or purchasers shall not be obliged to inquire into the application of such purchase-money upon or for the trusts
921 or purposes of these presents, or be in any manner whatsoever answerable for any loss, misapplication, or non-application of such purchase-money or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

Article fourth. At any public sale of the said railroads and property or any part thereof, whether made by virtue of the power hereinbefore granted or by judicial authority, the trustees hereunder for the time then being may bid for and purchase, or cause to be bid for and purchase, the property so sold or any part thereof in behalf of all the holders of bonds secured by this instrument and then outstanding in the proportion of the respective interests of such bondholders at a reasonable price if but a portion of said property shall be sold, and if the entire railroad and property shall be sold, then at a price not exceeding the whole amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale.

Article fifth. In case default shall be made in the payment of any half-yearly installment of interest on any of the said bonds, when such interest shall become payable according to the tenor of said bond or of any coupon thereto annexed, and such installment of interest shall remain unpaid and in arrear for a period of six months after the same shall have been demanded and become

payable as aforesaid, then and from thenceforth the principal sum of each of the bonds aforesaid shall, at the option of the trustees thereunder, become and be immediately due and payable, notwithstanding that the time limited in the said
922 bonds for the payment thereof may not then have elapsed; but a majority in interest of the holders of all the bonds aforesaid which shall be then outstanding, and upon which default in the payment of interest shall have been made and be continuing, and shall have the power, by an instrument in writing under their hands and seals or by a vote at a meeting duly convened and held, as hereinafter provided, at any time before the actual payment and acceptance of the interest in arrear, to instruct the trustees to declare the said principal due or to waive the right so to declare, on such terms and conditions as such majority in interest shall prescribe; and such majority in interest may, by such instrument in writing or such vote, annul or reverse any declaration of the trustees in respect to said bonds becoming or not becoming immediately payable: Provided always, That no act or omission either of the trustees or the bondholders in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default.

Article sixth. The trustees hereunder shall at all times during the continuance of the trust hereby created have full power and authority, to be exercised in their own discretion and not otherwise, to release and convey to any party who may be designated in writing by the said party of the first part, its successors or assigns, to receive the same, or to release from the lien and operation of these presents, in such other manner as they may deem proper, any portion of the premises hereinbefore granted which may be appurtenant to either of the said railroads, but which, in the judgment of the said
923 trustees, shall be unnecessary for use in connection therewith, and which shall have been acquired or held for stations, depots, shops, or other buildings, or for a supply of fuel, gravel, or other material, and also to convey or release as aforesaid, on like request, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with either of the said railroads, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said party of the first part, its successors or assigns, may deem it expedient to disuse or abandon by reason of such change; and they may consent to any changes in the location of any depot or other building which in their judgment shall have become expedient, and make and deliver the instruments necessary or proper to carry the same into effect: Provided always, That any and all lands and premises which shall be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees, upon the trusts of these presents, and that the proceeds of any and all lands and premises for which others shall not, within a reasonable time, be required, shall be paid over to the said trustees, to be by them invested in the purchase of the bonds aforesaid in the manner hereinafter provided, which bonds shall, when so purchased, be cancelled and surrendered to the

party of the first part, its successors or assigns, and the trustees shall also have full power to allow the said party of the first part, its successors or assigns, from time to time, to dispose, according to its or their discretion, of such portions of the equipment, machinery, and implements which shall be at any time held or acquired
924 for the use of either of the said railroads, but which shall have become unfit or unnecessary for such use, it being provided, however, that any and all new or other equipment, machinery, and implements which may be acquired in substitution for any so released shall, by virtue and force hereof, become and be, immediately upon the acquisition of the same, subject to the lien and operation of these presents, without any new conveyance or transfer or other act or ceremony whatever; and the proceeds of all sales of equipment or other personal property which may not be reinvested in new equipment, machinery, or implements for use upon or in connection with said railroad shall be paid over to the said trustees, to be by them applied as hereinafter provided in regard to the proceeds of the sales of lands.

Article seventh. The said party of the first part, its successors or assigns, shall and will, as soon as conveniently practicable after the date heteof, cause all and singular the lands granted as aforesaid to aid in the construction of said railroads to be carefully valued and appraised by one or more competent persons, in convenient sections, divisions, or parcels, for sale to emigrants and actual settlers, and in such appraisement any and all lands containing or supposed to contain coal or iron or any valuable mineral substance shall be distinguished from those which are classed as agricultural or pastoral, and shall cause a full and accurate list and description of said lands and premises containing, opposite each appraised section, division, or parcel, the value put upon the same, to be deposited with each of the said trustees, certified under the hands and seals of the ap-
925 praisers, which appraisement shall be subject to the approval of said trustees or a majority of them, and such statement and appraisal may, with the consent of them or a majority of them, be from time to time revised, altered, and corrected, a statement being in each case filed as aforesaid; and the said party of the first part, its successors or assigns, may at any time, in its or their own discretion and not otherwise, contract for the sale of any section, division, or parcel of said lands so appraised at a price not less than the appraised value thereof, according to the last preceding statement of such value filed with said trustees and approved by them or any two of them as aforesaid, and shall be entitled to have such section, division, or parcel of said lands released from the lien hereof upon the payment to the said trustees of the purchase-money of the same, not less than such appraised value thereof; and the said trustees or any two of them are hereby authorized and empowered, upon the sale as aforesaid of any such section, division, or parcel of said lands and the payment of the purchase-money thereof as aforesaid, to release and convey to such purchaser or purchasers or to his or their heirs or assigns the premises so sold, and thereby to discharge the same from the lien and operation of these presents and the

trusts hereby created: Provided always, That no section, division, piece, or parcel of said lands shall at any time be sold or released as aforesaid below the appraised value thereof without the consent in writing of all the trustees first had and received to such sale.

And it is hereby further declared and agreed that any of the lands aforesaid may be sold, as in this article above provided, wholly or partly on credit, provided that in any and every case of sale
926 wholly or partly on credit and to whomsoever the sale may be made the purchaser shall not receive a conveyance of the premises sold or any part thereof until payment in full of the purchase-money, but may have delivered to him a contract in evidence of his purchase, unless for any special reason it shall be expedient, in the judgment of the said trustees or any two of them, to accept from such purchaser a purchase-money bond and mortgage for the amount remaining unpaid, in which case the said trustees or any two of them may release the said premises to such purchaser upon receiving from him the cash portion of such purchase-money and his personal bond for the unpaid purchase-money, conditioned in double the amount of the said unpaid purchase-money for the payment of the same, in installments or otherwise, within a period of not exceeding five years from the date of such purchase, with interest thereon payable semi-annually.

And it is hereby expressly declared and agreed that any and all of the bonds aforesaid issued or to be issued by the said First Division of the Saint Paul and Pacific Railroad Company as aforesaid, and the payment whereof is intended to be hereby secured, shall be payable and receivable at the par value thereof, including the interest then accrued thereon on account and in payment of the purchase-money of any section, division, or parcel of said lands which shall be sold as aforesaid, and said bonds shall in such payment be deemed and accepted as equivalent in all respects dollar for dollar of the principal and accrued interest thereof to the same nominal amount in cash.

Article eighth. It is hereby declared and agreed that for
927 the purpose of granting and releasing from the lien of these presents such of the lands and premises aforesaid as shall or may be sold in conformity with the last preceding article of these presents the said trustees respectively may act, and they are hereby severally and respectively authorized and empowered to act, by agent or attorney, and all instruments executed and acts done by the agent or attorney of any of said trustees duly appointed for that purpose in respect to the conveyance or release of lands which shall be sold in conformity with said article shall be as valid and effectual to all intents and purposes, if the same be within the scope of authority of such agent, as if the same were executed by the trustee appointing such agent in person, provided that every such power of attorney may be revoked by the trustee giving the same at his pleasure at any time before the execution of the authority therein granted, and that each of the said trustees may remove at pleasure any agent by him appointed, and provided further, that nothing herein con-

tained shall be construed to prevent the said trustees from uniting on any one or more persons as such agent or agents.

Article ninth. The trustees or any two of them shall be authorized to allow reasonable compensation to any agents appointed by them as aforesaid, and to such clerks and assistants, if any, as they deem necessary to employ or as they may deem it necessary or proper for the said company to employ in regard to the sale of said lands, as in article seventh provided, and the preparation of contracts and conveyances thereof, and they may from time to time allow to be deducted out of the proceeds of lands so sold an amount sufficient to defray such expenses, if in their judgment such expenses be reasonable and proper and in just proportion to the benefit derived by this trust from sales of the said land: Provided always, that the holders of the bonds hereby secured shall not nor shall the said trustees or either of them become or be in any manner whatever personally liable or responsible for or in respect to any such liabilities or expenditures.

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Article tenth. The net proceeds of any and all sales of the lands aforesaid granted or to be granted as aforesaid for the purpose of aiding in the construction of said railroads or any part thereof which may be made by the said party of the first part, its successors or assigns, in conformity with the foregoing provisions of this instrument, are hereby inviolably pledged to the payment of the interest on said bonds and the redemption of the principal thereof in the manner hereinafter mentioned; and the said trustees shall semi-annually apply the said net proceeds, first, to the payment at maturity or as soon thereafter as practicable of any installment of interest on said bonds for which the said First Division of the St. Paul and Pacific Railroad Company shall have failed to make due provision; and, secondly, to the purchase of said bonds at the lowest price or prices not exceeding a premium of ten per centum over the par value thereof at which the said bonds may be offered for sale to the said trustees; but preparatory to such purchase of bonds in any semi-annual period in which the said trustees shall have funds in their hands applicable thereto, the said trustees shall, except in cases where, in their judgment, the amount of bonds which such funds would purchase shall make it inexpedient to incur the expense, give public notice by advertisement in two newspapers of good circulation, in their judgment, published in the city of New York and one newspaper published in the city of London, at least three times a week for two successive weeks, of their desire to receive proposals for the sale to them of the said bonds to such amount as the said funds in their hands may suffice to purchase, and after the expiration of two weeks from the last publication of such notice they shall apply the said funds to the purchase of said bonds at the lowest price or prices at which they may be offered without discrimination or preference between the bondholders offering the same for sale: Provided, however, that if the said bonds shall at the time being be quoted on the stock exchange and have a known market value in New York or London, and such market value shall be lower than any price at which the said bonds

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may be offered pursuant to the notice aforesaid, the said trustees may purchase the said bonds at the stock exchange of either city instead of from parties sending proposals to sell pursuant to such advertisement.

And it is hereby declared and agreed that all expenses attending such purchases of bonds and the publication and notification thereof may be defrayed by the said trustees from the said sinking fund.

The trustees shall, without unreasonable delay, cancel the bonds so redeemed by them and surrender the same to the said party of the first part, its successors or assigns, and they and the said party of the first part shall keep separate registries of all bonds so redeemed; and the registry of the company showing the numbers and amounts of the bonds so redeemed shall be at all reasonable
930 hours and times open to the inspection of the several holders of the bonds hereby secured as well as of the said trustees, and the numbers and amounts of all bonds redeemed in each year shall be stated in the annual report to be made by the directors of the said company for such year to the stockholders thereof.

Article eleventh. The First Division of the Saint Paul and Pacific Railroad Company shall hereafter keep at its transfer office or agency in the city of New York and also at its London agency an appropriate book for the transfer of said bonds, and shall also keep at the same places a certain other book to be designated as the register of first-mortgage bondholders; and every holder of bonds secured hereby shall be entitled to have his name and address and the denomination and number of any of the said bonds held by him entered in such register upon presenting at the said office or agency a written statement of the said particulars signed by himself, and, if required, duly verifying his title to said bonds by the production thereof or upon the written order of the person last registered as the holder. The registration of the name and address of each bondholder and the denomination and numbers of the bonds by him held upon such book, either in New York or London, shall be evidence of the right of the person so registered to vote as a bondholder or do any other act which by these presents a bondholder is declared or may be entitled to do in respect to the bonds so registered. Each of the trustees shall have free access at all reasonable hours and times to such bond registry, and shall from time
931 to time, on request in writing, be furnished with a copy thereof by the said company. Meetings of the said first-mortgage bondholders may be called in the manner hereinafter provided or in such mode as may be fixed by regulations prescribed or established by the bondholders; and the bondholders may vote at such meetings in person or by proxy, and the quorum may be defined and such other regulations or by-laws in respect to such meetings may be from time to time established, altered, or repealed by the bondholders acting by the majority in interest as to them shall seem expedient, and until the bondholders shall act such powers may be exercised by the trustees.

The said trustees and each of them shall have the right to require

that any act or resolution of the said bondholders affecting the duties of said trustees shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting.

Article twelfth. The said party of the first part shall at all times keep at its principal office and at its agencies in the cities of New York and London respectively a record of all the sales of lands which shall be made as aforesaid, and of the prices paid for the same, and the manner in which the purchase-money shall have been paid or secured, and of the amount, denomination, and numbers of the said bonds (if any) surrendered on account thereof, which record shall at all reasonable hours and times be open to the inspection, with the right of copy therefrom, of any and all holders of the bonds hereby secured; and the said trustees or a majority of them shall semi-annually, to wit, in the months of January
932 and July in each year, file in the said office a statement of the lands which shall have been by them released from the lien of these presents during the six months last preceding the time of filing such statement and of the consideration received by them therefor and of the disposition made of the same, which statement of said trustees shall also be at all reasonable hours and times open to the inspection of said bondholders, with the right to copy therefrom as aforesaid.

Article thirteenth. In case default shall be made in the payment of any semi-annual installment of interest to accrue on any of the said bonds, and if such interest shall remain unpaid and in arrear for the period of six months, or in case default shall be made in the payment of the principal of any of the said bonds, then in either and in every such case it shall be the duty of the trustees under these presents, upon a requisition to them in writing signed by the holders of not less than one-third of the whole amount of said bonds then outstanding and upon adequate indemnity against all costs, expenses, and liabilities to be by said trustees incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the powers granted by articles second and third of these presents or by a suit or suits in equity or at law in aid of the execution of such powers or otherwise as the said trustees, being advised by counsel learned in the law, shall deem most effectual to enforce such rights, it being understood and hereby expressly declared that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to
933 all other remedies allowed by law, and that the same shall not be deemed in any manner whatsoever to deprive the said trustees or the beneficiaries under this trust of any legal or equitable remedies by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof.

And it is hereby further declared and agreed that in case any trustee hereunder shall, in violation of the terms of this article, refuse to proceed or unreasonably delay in proceeding to enforce the rights of bondholders upon requisition and indemnity as above

provided, any or either of the other trustees may proceed to enforce such rights in the manner hereinbefore specified, and to exercise all the powers and authorities in that behalf hereinbefore granted as validly and effectually as if the trustee so refusing or unreasonably delaying had joined in the enforcement and exercise of the same: Provided always, and it is hereby expressly declared and agreed, that no holder of bonds secured to be paid hereby shall have the right to institute any suit or proceeding in law or equity for the foreclosure of this indenture or the execution of the trusts thereof without first giving notice in writing to the said trustees of default having occurred, and requesting them and affording them a reasonable opportunity to institute such suit or proceeding in their own name or to proceed to exercise the powers hereinbefore granted, and offering to them adequate indemnity against the costs and expenses of such suit or proceeding, and such notification, request, and offer of indemnity is hereby declared to be a condition precedent to any cause of action for the foreclosure hereof or the appointment of a receiver hereunder.

934 Article fourteenth. It is mutually understood and agreed by and between the parties to these presents and it is hereby declared that the word "trustees," as used, and whenever the same may occur in this indenture, is intended to refer to and describe and the same shall in all cases be construed to mean the persons or, in the case of vacancies in the trust, the person who for the time being shall be charged with the execution of the trusts of these presents, whether such persons or person be the said parties of the second part or any or either of them or successors or a successor of said parties of the second part or either of them hereunder, and in case of a vacancy or vacancies in said trust the surviving or continuing trustees or trustee shall be competent to exercise any and all powers and authorities hereunder hereinbefore granted to the "trustees" or to the said parties of the second part; and it is further mutually agreed and declared that each of the said trustees shall be entitled to reasonable compensation for any and all services which may hereafter be rendered by him in said trust, which compensation the said party of the first part hereby promises and agrees to pay; but in case the said party should make default in such payment the same may be retained by the trustees out of any trust moneys coming into their hands, and such reasonable sum as shall be so retained shall, unless the said trustees be then in possession of said premises, become and be a lien upon the said premises and secured by the trusts of this indenture, to be paid by the said party of the first part, with interest, for the benefit of the sinking fund hereinbefore created.

935 And it is further mutually agreed that the said trustees shall not nor shall any of them be in any manner whatever responsible for the default or misconduct of each other in said trust or for the default or misconduct of any agent or attorney appointed pursuant to these presents, if such agent or attorney be selected with reasonable care, or for anything whatever in respect to

said premises or the trusts hereby created, except personal misconduct or gross negligence in the execution of said trusts.

And it is further mutually agreed that the said trustees or any or either of them may resign the trust hereby created and be discharged from all further duty thereunder upon giving three months' notice in writing to the said party of the first part and calling a meeting of the bondholders, or upon such shorter notice as the said party of the first — and a majority in interest of the said bondholders may accept as sufficient; and also that the said trustees or any or either of them may be removed from office by the vote of a majority in interest of the holders of the said bonds, the said vote being had at a meeting of the said bondholders duly held and being attested by an instrument in writing under the hands and seals of the persons so voting, and that in case at any time hereafter either of the said trustees or any trustee hereafter appointed shall die or resign or be removed as herein provided or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee may be appointed by the holders for the time being of a majority in interest of the said bonds then outstanding at a meeting of said bondholders to be duly convened and held in conformity with the provisions of these presents.

And be it further mutually agreed and declared that in case
936 any trustee hereunder shall die or resign or be removed, as herein provided or otherwise, or become *non compos mentis* or otherwise legally incapable or unfit to act in said trust, all powers and authorities shall, if there be any of his associate trustees continuing in office, vest in such associate trustees or trustee, subject to the provisions of these presents, until the appointment of a successor to such trustee; and that upon the appointment of a successor to such trustee such successor shall, by force of these presents and without any further assurance or conveyance, become vested with and entitled to exercise any and all powers and authorities such trustee so dying, resigning, being removed, or becoming *non compos mentis* or otherwise legally incapable or unfit to act in said trust was vested with or entitled to exercise at the time of his decease, resignation, or removal, or of his becoming *non compos mentis* or legally incapable or unfit to act as such trustee; but, nevertheless, in case of resignation or removal the trustee so resigning or being removed and in case of the death of a trustee the surviving trustee shall, if so required by a majority in interest of said bondholders, or by the new trustee who may be appointed, execute, acknowledge, and deliver to him a good and sufficient deed or other instrument to vest in him all the powers and authorities which were possessed by his predecessor in said trust as aforesaid under or by virtue of these presents: Provided, nevertheless, that in case it shall prove, after reasonable exertions, to be impracticable to appoint a trustee in the manner aforesaid, and that the appointment of such new trustee shall be inconveniently or unreasonably delayed, and that such vacancy in said trust shall continue for the period of ninety days after the existence of the same shall have been made known
937 to any meeting of said bondholders and to the said party of the first part, it shall be competent for any holder or holders

of said bonds to the amount of not less than five hundred thousand dollars to apply to any court of competent jurisdiction for the appointment of a new trustee to fill such vacancy, upon such reasonable notice to the parties interested, including the said party of the first part, as the said court may prescribe, and any trustee lawfully appointed upon such application shall become vested with and be subject to the same powers and authorities as if appointed by the said bondholders in the manner aforesaid.

And it is hereby further expressly declared and agreed that whenever and as often as any contingency shall arise in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or power, it shall be the duty of the said trustees and they or a majority of them shall be, and they are hereby, authorized and required to call a meeting of all the holders of bonds secured hereby, to be held in the city of New York, by advertisement (the expense whereof shall be a liability of said party of the first part hereunder and may be defrayed, if necessary, from the trust funds) to be published three times in each week for six weeks in at least two newspapers of good circulation amongst the business community in said city and one newspaper in the city of London, or the said meeting may be called in such other manner as may be prescribed for the convening of meetings of said bondholders pursuant to the provisions of this instrument, and in default of such meeting being called by the said trustees or a majority of
938 them within thirty days after notification in writing to them by any bondholder of the necessity therefor, it shall be competent for any holder or holders of said bonds to the aggregate amount of five hundred thousand dollars to call said meeting in the manner aforesaid, and at such meeting so convened the holders of said bonds shall be competent to exercise in person or by proxy all the powers and authorities conferred upon them by these presents.

Article fifteenth. The First Division of the Saint Paul and Pacific Railroad Company having contracted as aforesaid to construct and equip said railroads, and it being contemplated by the said party of the first part to lease said railroads to the said company for a term of ninety-nine years, it is hereby expressly provided, agreed, and declared that any and every such lease shall be in all respects subject to these presents and to the due enforcement and execution thereof, and to all and singular the powers, rights, and trusts herein contained; and it is hereby further provided, agreed, and declared that any and all rolling stock, equipment, and materials whatsoever which, pursuant to such lease or otherwise, shall or may be acquired or furnished for the use of the said railroads or either of them by the said First Division of the Saint Paul and Pacific Railroad Company shall by the mere acquisition thereof for such use become and be part and parcel of the property hereinbefore granted and become and be subject in all respects to the lien and operation thereof in the same manner and with the same effect as if such property had been acquired by the said party of the first part hereto for such use.

939 Article sixteen. If the said first Division of the Saint Paul and Pacific Railroad Company or the said party of the first part, or the successors or assigns of either of said companies, shall well and truly pay the principal of each and every of said bonds when the same shall become payable and all interest thereon as such interest shall from time to time mature, according to the tenor of such bonds respectively and the terms of the several coupons thereto annexed, and shall well and truly do and observe every other matter and thing provided or mentioned in these presents to be by them respectively done and observed, then and in that case all the estate, right, title, and interest of the said parties of the second part and of the survivors and survivor of them, and of their and his successors and successor in the trust by these presents created, shall cease, determine, and become void; otherwise the same shall remain in full force and virtue.

And the said party of the first part, for itself, its successors, and assigns, in consideration of the premises and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said parties of the second part, and their successors in the trust created by these presents, that whenever and as often as the said party of the first part, its successors or assigns, shall hereafter acquire any lands from the Government of the United States or from the State of Minnesota by reason of the construction of the railroads hereinbefore granted or of either or any part of either thereof, or shall acquire any other property, rights, franchises, or things whatsoever pertaining to or for use upon the railroads hereinbefore granted or either or any part of either thereof, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same and every part and parcel thereof upon and subject to the trusts of this indenture until conveyance thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said parties of the second part or their successors in the trust by these presents created.

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And the said party of the first part, for itself, its successors, and assigns, hereby covenants and agrees to and with the said parties of the second part and their successors in the trust created by these presents that the said party of the first part, its successors and assigns, or the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, shall and will diligently and faithfully use and apply the net proceeds of the negotiation of said bonds or such of them as shall be negotiated to the construction and equipment of said railroads, and shall and will in each and every year ensuing the date hereof also faithfully use and apply the net earnings and income to be from time to time derived from said railroads or either of them to the payment of the interest accruing in such year on said bonds when the same shall become due until all the said bonds shall be fully paid and satisfied, and that the said party of the first part and the said First Division of the Saint Paul and Pacific Railroad Company and their respective successors and assigns, shall and will from time to time and at all

times hereafter, and as often as thereunto requested by the
941 trustees under this indenture, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto such trustees upon the trusts herein expressed the railroads aforesaid, together with their equipments, appurtenances, and franchises, and all and singular the lands, property, and things hereinbefore mentioned or described and granted or conveyed or agreed to be granted or conveyed to the said parties of the second part or their successors in the trusts created by these presents, as by the said parties of the second part, or their successors in the trust hereby created, or by their counsel learned in the law, shall be reasonably advised, devised, or required.

In witness whereof the said party of the first part has caused its corporte seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary, and the said parties of the second part, for the purpose of evidencing their acceptance of this trust, have hereunto set their hands and seals the day and year first above written.

942 *Special Acts of the Legislature of the State of Minnesota Offered in Evidence by Defendants.*

Act of May 22, 1857.

SECTION 3. The said corporation shall have the right to enter upon any lands for the purpose of making surveys and for the right of way and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding two hundred feet in width throughout the entire length of its said railroads; may enter upon and take possession of and use all and singular any lands, streams, and materials of every kind beyond the width of two hundred feet for the location and construction of depots and stopping stages, station grounds, and houses and for the purpose of constructing bridges, dams, embankments, excavations, spoil-banks, turnouts, engine-houses, shops, and other buildings necessary for the constructing, completing, altering, maintaining, preserving, and complete operation of said railroads. All such lands, waters, materials, and privileges belonging to the Territory or future State of Minnesota are hereby granted to said corporation for said purposes, and this act shall be sufficient notice to all persons claiming any interest in the same; but lands owned or belonging to any person, company, or corporation may be taken and appropriated for the purposes aforesaid and shall be valued and paid for in the manner hereinafter provided.

943 SEC. 4. The capital stock of said corporation shall be five millions of dollars divided into shares of one hundred dollars each, which shall be deemed personal property and may be issued and transferred in such manner and at such places as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by the stockholders of such amount in such manner, at such times, and on such terms as

they deem proper, and on refusal or neglect on the part of stockholders or any of them to make payment agreeably to such requisitions the share or shares of such delinquents may, after thirty days' public notice, be sold at public auction under such rules as said board of directors may prescribe, the surplus money, if any remain after deducting the payments due, with interest, and the necessary costs of sale, to be paid to such delinquent stockholder. The board of directors hereby appointed shall cause books to be opened for the subscriptions to said stock in the city of Saint Paul upon the acceptance of this charter, of which notice shall be given by publication in two or more newspapers published in Saint Paul and in one or more published in Saint Anthony, and said books shall remain open ten days thereafter; and the said directors may thereafter also cause books to be opened in such manner and at such other places and times as they shall direct, and may from time to time increase the capital stock to an aggregate amount not exceeding twenty millions of dollars whenever they may deem it expedient for the operations of said corporation to make such increase.

SEC. 5. All the affairs of said corporation shall be managed
944 by a board of fifteen directors, who shall be stockholders, and a majority of whom shall be citizens of the Territory, and who are hereby invested with all the powers of said corporation. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws and at such places as shall be prescribed by the board of directors and stated in such notice. The votes shall be delivered in person or by proxy duly authorized, and in all cases in which stockholders shall vote each share of stock shall be entitled to one vote, and in all elections for directors those stockholders equal to the number to be elected having the greatest number of votes shall be deemed and declared duly elected. The elections shall be conducted in such manner as shall be prescribed by the by-laws of the company, and if from any cause an election of directors shall not be had at the time when by the provisions of this act or by the by-laws of said corporation it should be had the same may be held at any other time on notice to be given as aforesaid; and until such election be had the directors of the preceding year shall continue to act, and the corporation hereby created shall not forfeit nor lose any of its privileges, franchises, or immunities by reason of the irregularity or want of such election.

SEC. 6. The following-named persons are hereby appointed and shall constitute the first board of directors, whose term of office shall continue until an election shall be held and their successors duly elected as herein provided, viz., F. R. Delano, William Willim,
Alex. Ramsey, Edmund Rice, R. R. Nelson, Wm. L. Ames,
945 Richard Chute, Henry T. Welles, Abraham M. Fridley, Dwight Woodbury, Franklin Steele, S. B. Lowry, J. D. Crittenden, Charles H. Oakes, Daniel Bassett, whose duties and powers shall commence and be in force from and after the passage of this act.

SEC. 8. A majority of the board of directors shall constitute a quorum for the transaction of business and shall meet at such times and places and be convened in such manner as they shall decide upon; shall elect one of their own number to be president and one to be vice-president. The president shall, when present, preside at all the meetings of the board and of the stockholders, and when absent the vice-president shall discharge the duties of president, and in case of the absence of the president and vice-president the directors may appoint a president *pro tem.*; shall have power to constitute an executive committee and prescribe its powers and duties; to appoint a secretary, treasurer, and such engineers, superintendents, agents, and other officers as they may deem necessary, fix their compensation and demand adequate security for the faithful discharge of their duties, and fill any vacancy which may occur in their own board.

SEC. 11. The said company is hereby authorized and empowered in its corporate capacity to borrow any sums of money from any person or persons, corporation or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and any person or party of whom such loan may be obtained, any law on the subject of usury in this Territory or
946 future State or any State where such transaction may be made to the contrary notwithstanding, and to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other obligations and securities in amount and kind as may be deemed expedient by said corporation in consideration of any such loan or in discharge of any liabilities which it may incur in the construction, repair, equipment, or operating of said road; and the powers of the said company for the purposes aforesaid and for all purposes necessary to carrying out the object of said company are hereby ratified and confirmed and the contracts and official acts of said company declared binding in law and equity upon said company and upon all other parties to said contracts.

SEC. 20. The said Minnesota and Pacific Railroad Company shall be capable in law of taking and holding any lands granted by the Government of the United States or of this Territory or of the future State or by other parties which shall be conveyed to it by this act or by deed, gift, or purchase or by operation of law, and may mortgage, pledge, sell, and convey the same or otherwise dispose of all their right, title, interest, claim, or demand of, in, and to such lands so granted to said company, and in any other estate, real, personal, or mixed, of which said company may be seized or which it may acquire subsequently thereto in such manner and on such terms as the directors may think proper.

SEC. 21. That said company is hereby authorized and empowered, in its corporate capacity, to make, execute, issue, and deliver
947 its bonds or obligations in any amount which the directors may deem necessary or expedient: Provided, that the faith of the Territory or future State of Minnesota shall be in nowise pledged for the redemption of said bonds, and that no banking privileges are hereby granted to said company; and the directors of said

company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable, the person or persons, trustee or trustees, or corporation to whom they shall be payable, and whether payable to order or to bearer, or how otherwise negotiable; the rate of interest which said bonds shall bear and the manner and form in which the interest coupons annexed to them shall be executed; and to secure the payment of all or any of said bonds the said company is hereby authorized and empowered, in its corporate capacity, to make, execute, and deliver one or — mortgages or deeds of trust upon the whole or any part of its railroad or branches constructed or authorized to be constructed and of the estate granted by this act and any or all other of their estate, real, personal, or mixed, in possession or expectancy; and said company is also hereby empowered and authorized, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample powers to enter into and upon and to take possession, have, use, and employ or to sell or dispose of the whole or any part of said railroad and branches and all corporate and other franchises, rights, and privileges of said company, and in case of any such sale to grant and convey to the party or parties acquiring title under any such sale and their asso-
948 ciates, successors and assigns, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by such mortgage or deed of trust enumerated and conveyed which belonged to and were enjoyed by the said company as fully and absolutely in every respect as the said company, its stockholders, officers, and agents might or could have done if such sale or foreclosure had not taken place.

And the directors of said company are hereby authorized and empowered to prescribe, by resolution to be by them adopted, all matters relating to the form and terms of any such mortgage or deed of trust and of its execution and delivery, and they are authorized to provide for the periodical payment to such trustee or receiver as they shall appoint a certain sum to create a sinking fund with which to pay off and discharge at or before maturity all or any of the bonds by them authorized to be issued, and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate, by lot or any other suitable manner, the bond or bonds to the payment of which such sinking fund or any part thereof shall be applied; and the said company is hereby fully authorized and empowered, by its agents or brokers or otherwise, at any place, to sell, loan, pledge, hypothecate, or otherwise dispose of any or all of the aforesaid bonds hereby authorized to be issued at par or at any price less than par, and for such sum or sums and on such terms as to the said company or its agents or brokers shall appear most for the interest of said company, and any such mortgage or deed of trust and every discharge or satisfaction thereof may be recorded in the office of the secretary of the Territory or future State of Minnesota in a
949 proper book kept for that purpose, and the certificate of such

recording endorsed on such mortgage or deed of trust shall have the same effect as if recorded in the several counties through which said road may run or in which said land may be, and such record in the office of the secretary shall be sufficient notice to all persons.

SEC. 25. Said company is hereby authorized and shall have full power to locate, construct, and operate a railroad, with one or more tracks, from Winona, up the valley of the Mississippi river, to St. Paul, and to extend its line of railroad from its terminus, at a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, to any point on the Missouri river north of the forty-fifth parallel of north latitude, and to increase its capital stock equal to the full cost of said railroad and extension.

SEC. 28. This act is hereby declared to be a public act and shall be favorably construed to effect the purposes thereby intended, and copies thereof, printed by authority of the Territory or State of Minnesota, shall be received as evidence thereof in all cases.

SEC. 29. This chapter one of this act shall take effect and be in force from and after the passage of this act.

Act of May 10, 1862.

SEC. 4. The board of directors of the Saint Paul and Pacific
950 Railroad Company shall consist of seven persons, who shall be elected by the stockholders annually, four of whom at least shall be citizens of the United States, and any loyal citizen thereof shall be eligible to the office of director, and a majority shall constitute a quorum, and meetings of said board may be held within or without this State, provided that in the election of directors and at all other elections or meetings of said company a majority of votes shall govern. Each share of full-paid stock shall entitle the holder thereof to one vote, and upon any shares of stock not fully paid up the holder shall be entitled to one vote and no more for each hundred dollars actually paid, but no stock shall be voted upon upon which there shall be then due any unpaid installment by assessment.

Act of March 2, 1865.

SEC. 2. Any and all additional grants of land made prior to the passage of this act or which may hereafter be made by the Congress of the United States to the State of Minnesota for the purpose of aiding in the construction of the lines of railroad or any portion of them authorized to be constructed by the Saint Paul and Pacific Railroad Company shall inure to the benefit of said company, and said lands and the present and future interest of the State in or to them are hereby granted and assigned unto the said company upon the same terms and conditions as the lands heretofore granted for the same purpose, together with the conditions contained in said act of Congress donating the same; and the title of all lands
951 heretofore or hereafter granted by the Congress of the United States to the State of Minnesota for the purposes aforesaid

shall vest in said company at the time and upon the terms prescribed by said act or acts of Congress making the grant, and it shall be the duty of the Governor, on behalf of the State, to convey to said company the lands so granted according to the terms and provisions contained in the act or acts aforesaid.

SEC. 3. Nothing contained in any act or law shall be so construed or held as to prohibit in the future the Saint Paul and Pacific Railroad Company from creating and issuing any bonds, mortgages, deeds of trust, or other securities or liens upon the whole of their lines of railroads and branches and the lands appertaining thereto or so much thereof as they may deem meet and expedient as one consolidated line.

SEC. 4. Any or all the directors of the Saint Paul and Pacific Railroad Company may be citizens or subjects of any foreign country.

And the directors of said company may change the name of said company to that of (the) Winona, Saint Paul and Pacific Railroad or Railway Company if they shall deem it fit and proper so to do.

This act shall take effect from and after its passage, and this and all acts relating to the Saint Paul and Pacific Railroad Company and to the lines authorized to be constructed by them are hereby declared to be public acts.

952 Act of March 6, 1869.

SEC. 2. That the laws now in force relating to the construction and operation and all the provisions of the charter of the First Division of the Saint Paul and Pacific Railroad Company, so far as applicable, shall be extended to and be in force for the construction and operation of the branch road authorized by this act.

SEC. 3. That if it shall be found convenient for the construction and operation of said proposed extension of said railroad, said company is hereby authorized to create general or common or special or preferred stock, applicable to said road, and may provide by agreement for the management of the business of said road authorized by this act as a distinct, separate interest; and it may provide that stock, bonds, debts, or liabilities issued or contracted for the benefit of said branch shall apply to and bind only the property thereof, and may in like manner provide that debts and liabilities contracted for the benefit of the other lines of said company shall not be a lien or incumbrance on the line authorized by this act.

SEC. 4. Said company may, by resolution of its board of directors, designate the name by which said extension may be known, to take effect after public notice of such change or designation shall be given for one month in one of the daily newspapers of the city of St. Paul, but such change of name shall not affect any rights or liabilities of said company under any former name.

953 Act of March 5, 1874.

An act to extend the time for the completion of branch lines of railroads of the St. Paul and Pacific Railroad Company.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That the time for grading and completion by the St. Paul and Pacific Railroad Company, in accordance with the change of such branch lines authorized in and by an act of Congress of the United States, passed March third, A. D. eighteen hundred and seventy-one, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," be, and the same is hereby, extended as is hereinafter provided; and the said company so completing the said lines within the times in this act limited, and upon the terms and conditions hereinafter contained, shall have and be entitled to the grant of lands in any act of Congress heretofore made and provided in relation thereto, or to any extension of said grant of lands hereafter made by Congress to said company or to the State of Minnesota; and the company so completing said lines in accordance with the terms and conditions of this act shall have and be entitled to all and singular the same rights, privileges, immunities, lands, and property as if such lines had been constructed and put in operation, fully equipped for business, within the time heretofore limited by law for the same, except as modified and changed by the provisions of this act.

954 SEC. 2. The foregoing extension of time is hereby granted to said railroad company only upon the conditions following—that is to say:

First. That the branch line from Sauk Rapids to Brainerd shall be by said company completely finished, equipped, and in operation through its whole length on or before the first day of December, A. D. eighteen hundred and seventy-four.

Second. That the branch line from St. Cloud to St. Vincent shall be constructed and operated "via" Sauk Centre, Osakis, Alexandria, and Fergus Falls as follows: From Melrose, in Stearns county, to Alexandria, in Douglas county, on or before the first day of December, A. D. eighteen hundred and seventy-four; from Alexandria to Fergus Falls, in Otter Tail county, on or before the first day of July, A. D. eighteen hundred and seventy-five, and from Fergus Falls via Glyndon and Crookston to Saint Vincent on or before the first day of December, A. D. eighteen hundred and seventy-five.

Third. That all persons or their assigns or legal representations (representatives) who in good faith settled upon any of the lands granted to said company for the construction of said branch lines of road at or prior to the first day of January, A. D. eighteen hundred and seventy-two, and who have continued to occupy the same, shall be allowed to perfect their title thereto upon application to said company after it has acquired title thereto upon the terms and conditions imposed by the laws of the United States as to fees, price, and proofs had not said grant been made to said company: Pro-

955 vided, That application therefor shall be made to said com-

pany within six months after the fee of said land shall be acquired by said company: And provided also, That said applicant shall, within the time fixed by law and by proper proof and the payment to the company of the fees or price for land as provided by law in case of settlers upon the public lands of the United States, establish his claim and right thereto.

Fourth. The said railroad company and its successors or assigns shall transport passengers and freight over its lines constructed under the provisions of this act, as also upon the lines and branch lines now constructed, at such just and reasonable rates as the Legislature of Minnesota may from time to time prescribe.

Fifth. No lands shall be deeded to said company by the Governor of this State until the sections of said lines between Melrose and Fergus Falls and Sauk Rapids and Brainerd are both fully completed and in operation as herein set forth.

Sixth. In case of failure on part of said company to construct, equip, and put in operation said extension lines as is herein expressly provided all parts remaining unfinished, with the grants of lands pertaining thereto, and all the rights, privileges, franchises, immunities, lands, and property attaching to said uncompleted parts by reason of any law of this State or of the United States, or by reason of any act or deed of said company, shall be absolutely forfeited to the State without any other act or ceremony whatever, and shall not thereafter enure in any way to the Saint Paul and Pacific Railroad Company, but shall be forfeited to the State of Minnesota for further disposition, as hereinafter provided.

956 Eighth (Ninth). The said company shall within four months after the approval of this act accept all the terms and conditions thereof by a resolution of its board of directors or of the receiver of said company, a copy of which resolution, duly authenticated, shall be sent to the Governor of this State, to be by him filed in the office of the secretary of state.

SEC. 3. All acts and parts of acts relating to the lines of railroad hereinbefore specified which in any manner conflict with the provisions of this act are hereby repealed; but this act shall not be construed as repealing or in anywise modifying the act entitled "An act to secure the payment of certain debts contracted in the construction of certain lines of road of the Saint Paul and Pacific Railroad Company," approved February twenty-first, A. D. eighteen hundred and seventy-four.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 5, 1874.

Act of March 8, 1875.

An act to extend the time for the completion of the unfinished lines of railroad of the St. Paul and Pacific Railroad Company.

957 Whereas the said railroad company hath already expended over three million dollars obtained from the sale of bonds secured by a mortgage or trust deed upon all the lands, prop-

erty, and franchises of said company in the construction of a line of railroad from Saint Cloud by way of Glyndon to St. Vincent and a line of railroad from Watab to Brainerd;

And whereas said lines of railroad are still incomplete and unfinished;

And whereas the time given by the State to said railroad company to complete said lines of railroad hath already expired;

And whereas the public interests require that said lines of railroad should without delay be finished, completed, and put in operation, and that the rights of said railroad company, its mortgagees and other creditors, should be fully saved and protected in the premises:

SECTION 1. That the time for the grading and completion by the St. Paul and Pacific Railroad Company of its lines of railroad from St. Cloud by way of Glyndon to St. Vincent and from Watab to Brainerd be, and the same hereby is, revived and extended until the first day of December, A. D. eighteen hundred and seventy-six, upon the terms and conditions hereinafter specified; and the said company, on completing said lines of railroad as hereinafter required and upon the terms and conditions hereinafter contained, shall have and be entitled to any and all lands granted or to be granted by the United States of America to the State of Minnesota to aid in the construction of said lines of railroad, and shall have and be entitled to all and singular the same lands, rights, privileges, and franchises as if such lines of railroad had been constructed
958 and put in operation within the time heretofore limited by law for that purpose, excepting and reserving from this or any other provisions of this act all lands upon which actual settlers had entered upon in good faith prior to June twenty-second, eighteen hundred and seventy-four.

SEC. 2. The line of railroad from St. Cloud to St. Vincent shall be located and constructed through Sauk Centre, Osakis, Alexandria, and Fergus Falls, and that part of the line from Melrose to Fergus Falls shall be first constructed and put in operation, and shall be fully completed from Melrose to Alexandria by the first day of December, A. D. eighteen hundred and seventy-five, and from Alexandria to Fergus Falls by the first day of December, eighteen hundred and seventy-six.

SEC. 3. The Governor of this State shall, on the completion of said railroad from Melrose to Alexandria, upon demand of the proper officers or representatives of said company, convey by deed of conveyance or certify over to said railroad company three hundred thousand acres, to be selected by the Governor, of the lands already conveyed by the United States to the State of Minnesota for said railroad company, together with such other lands within the limits of said grant, to be selected by the Governor, equal in quantity to the lands to which the State is entitled for the construction of the railroad from Melrose to Alexandria, and on the completion of said railroad from Alexandria to Fergus Falls the Governor shall convey by deed of conveyance or certify over to

said railroad company all other lands than those herein pro-
959 vided for which may have accrued to the State for the construction of said lines of railroad: Provided, however, That the Governor before making any conveyance to said company shall select and set apart and reserve to the State four hundred thousand acres of the lands accrued and conveyed to the State for the construction of said lines of railroad for the purpose of securing the payment of debts contracted and due for the construction of said lines of railroad or any part thereof, the same being the debts contracted in the building of said railroad, and secured by the act approved February twenty-first, eighteen hundred and seventy-four, relating to the same; but when such debts are fully paid or otherwise duly secured, then the lands so reserved shall by the Governor be conveyed or certified over to said railroad in the manner as is herein provided for the other lands accrued or accruing to the State for said lines of railroad: Provided, further, That before any conveyance of land shall be made to said company there shall be executed by the company, trustee, or bondholders or other proper authority a valid and binding assent to the said reservation, satisfactory to the Governer, of said four hundred thousand acres of land, so that the same may be held, used, and appropriated for the payment of said claims due the citizens of Minnesota as herein provided.

SEC. 4. Said railroad company, its successors or assigns, shall at all times transport over all the lines of its railroad passengers and freight at just and reasonable rates, and shall make no unjust or unreasonable discrimination respecting the same.

960 SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 8, 1875.

Act of March 6, 1876.

An act to prevent a diversion by the St. Paul and Pacific Railroad Company of lands granted by Congress to the State of Minnesota and by the State to said company to aid in the construction of a railroad running from St. Cloud to the navigable waters of the Red River of the North by said company, converting that part of said railroad running north from Glyndon into a continuation of the main line of the First Division of the St. Paul and Pacific railroad, and abandoning that part of said railroad running from Melrose to Glyndon.

Whereas Congress of the United States granted certain lands to the late Territory and to the present State of Minnesota to aid in the construction of a line of railroad extending from St. Cloud to St. Vincent, on the navigable waters of the Red River of the North; and

Whereas the State of Minnesota, at the selicitation of the St. Paul and Pacific Railroad Company, and upon its promise that it would construct said line of railroad throughout its entire length, granted

said lands to the St. Paul and Pacific Railroad Company upon the condition that it would construct the said line of road; and

Whereas upon the faith of the undertaking by said com-
961 pany to construct said line of road a large population has settled along the line of said road between St. Cloud and Glyndon, which population will be left without convenient railroad communications if said line of railroad between said last-named points is not constructed; and

Whereas the possibility of procuring any company to construct the part of said road between St. Cloud and Glyndon must depend upon such company having the advantage of owning and controlling said line of road throughout its entire length; and

Whereas the St. Paul and Pacific Railroad Company threaten to violate their obligation to the State to build the whole of said line of road by converting that part of the line of road north of Glyndon into an extension and feeder of the main line of the First Division of the St. Paul and Pacific railroad, and by abandoning the construction of the unfinished portion of the said line between St. Cloud and Glyndon, whereby the completion of that part of said road will be much delayed, if not rendered impossible: Therefore

Be it enacted by the Legislature of the State of Minnesota—

Section 1. The St. Paul and Pacific Railroad Company shall not, nor shall any company or individual owning or operating the lines thereof, either directly or indirectly, make or maintain, or cause to be made or maintained, or permit any railroad connection whatever with or between the so-called St. Cloud and St. Vincent Extension line of railroad and the main line of the St. Paul and Pacific rail-
road or any branch or extension thereof, or any railroad
962 connection therewith, at any point westerly of range number forty-one (41), in said State, until the full completion of the lines of railroad of the St. Paul and Pacific Railroad Company extending from Saint Cloud to Saint Vincent and from Sauk Rapids to Brainerd; nor shall any of the parties above named in this section, by any lease, purchase, sale, or contract of any kind, facilitate or permit any running connection with any road constructed or operated by any party west of said range and between the main line road and the St. Cloud and St. Vincent Extension line road above mentioned prior to the full completion of the said extension lines between St. Cloud and St. Vincent and between Sauk Rapids and Brainerd.

SEC. 2. In case the St. Paul and Pacific Railroad Company or their successors shall violate any of the provisions of this act, then and thereupon all the rights, benefits, privileges, lands, property, and franchises conferred upon said company by any act of the Legislature of this State pertaining to all parts of said lines of road which are unfinished at the time of the passage of this act shall become and be forfeited to the State absolutely without any judicial or legal proceedings whatever, in which case all and singular the same, without merger or extinguishment, to be used, granted, and disposed of by the State to aid in the construction of the said lines

of road between Sauk Rapids and Brainerd and between St. Cloud and St. Vincent.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 6, 1876.

963 Act of March 1, 1877.

SEC. 6. The time for the completion of the uncompleted portions of the line of railroad extending from St. Cloud to St. Vincent, commonly known as the "St. Vincent Branch of the St. Paul and Pacific Extension Lines," is hereby extended as follows:

From Melrose to Sauk Centre until July one (1), A. D. one thousand eight hundred and seventy-eight (1878).

From Sauk Centre to Alexandria until January one (1), A. D. one thousand eight hundred and seventy-nine (1879).

From Alexandria to Fergus Falls and from Crookston to St. Vincent until January one (1), A. D. one thousand eight hundred and eighty (1880).

From Fergus Falls to Glyndon until January one (1), A. D. one thousand eight hundred and eighty-one (1881).

Provided, however, that such extensions of time are made subject to all the provisions of this and of the succeeding sections of this act.

In case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of the said line of railroad within the times therefor limited in this section, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, shall at once be and become absolutely forfeited to the State of Minnesota without any act or ceremony whatsoever; and it shall be the duty of the Governor forthwith upon such failure to enter upon and take possession for and in the name of the State all and singular the portions
964 of road so remaining uncompleted and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto, and upon such forfeiture all and singular the lines of road, land grant, rights, franchises, immunities, and property so forfeited shall be held by the State, without merger or extinguishment, to be used and regranted for the construction of said line of road.

In case any forfeiture of any portion of the said line of road should occur under the provisions of this section, then and in that case any company or corporation now organized or that may hereafter organize having authority from this State to build, maintain, and operate a line of railroad within or through this State may succeed to and acquire the right to complete, own, maintain, and operate the uncompleted portions of said line of railroad mentioned in this section by filing with the Governor a written notice of its desire and intention under and subject to the provisions of this act to complete, equip, maintain, and operate the then uncompleted

portions of said line of railroads. Work shall be commenced thereon within thirty (30) days after the filing of such notice, or as soon thereafter as the state of weather shall permit, and be prosecuted to completion at the rate of not less than sixty (60) miles per year until all the same has been completed, but upon default to commence work or to prosecute the same to completion within the time aforesaid, such company shall forfeit all right to complete, maintain, or operate the portion of said line remaining uncompleted at the time of such default without further act or ceremony to be used and granted for the construction of said line of road.

965 SEC. 7. If any company shall make default in its undertaking to complete either of said lines of road or any section or division thereof under the provision of this act, any other company may comply with the provisions of this act, and shall thereupon acquire the right to complete, own, maintain, and operate the then remaining uncompleted portions of said line of road in respect to which default has been made, but subject to the same terms and conditions as to forfeiture as is hereinbefore in this section provided, and any company so undertaking shall be entitled to any indemnity deposit which shall have been forfeited and subject to be used to aid in the completion of the line of road, section, or division thereof so undertaken by said company.

Any company acting under and pursuant to the provisions of this act shall become entitled to and invested with all and singular the rights, privileges, immunities, franchises, lands, and property appertaining to the portion of road it shall complete which were formerly held by or which formerly belonged to the St. Paul and Pacific Railroad Company or which were formerly granted to the St. Paul and Pacific Railroad Company, and shall be entitled to the same whenever and as often as any continuous ten (10) miles of road are completed, subject, however, to the exceptions, limitations, terms, and conditions hereinafter mentioned.

SEC. 8. None of the lands outside the "ten (10) mile limits," so called, commonly designated "indemnity lands," shall accrue to any company on account of the construction of any portion

966 of the said line of road extending from St. Cloud to St. Vincent until there shall first have been reserved therefrom a sufficient quantity to make up ten (10) full sections for each mile of said line lying between such "portion" thereof and Melrose.

SEC. 12. Chapter one hundred and seventeen (117) of the special laws of the year one thousand eight hundred and seventy-six (1876), being an act relative to the construction of a railroad between Breckenridge and Glyndon, and approved March sixth (6th), A. D. one thousand eight hundred and seventy-six (1876), and chapter one hundred and five (105) of the special laws of one thousand eight hundred and seventy-four (1874), and chapter forty-nine (49) of the special laws of one thousand eight hundred and seventy-five (1875), are hereby repealed.

967 & 968 In the United States Circuit Court, District of Minnesota.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Testimony on Part of Complainant in Support of Supplemental Bill.

969 In the United States Circuit Court, District of Minnesota.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Testimony on Part of Complainant in Support of Supplemental Bill.

Before O. B. Hillis, Esq., special examiner.

OCTOBER 10, 1884.

The parties appeared by their counsel.

S. U. Pinney, H. R. Bigelow, and Geo. B. Young, Esqrs., for complainant.

W. P. Clough, Esq., for defendant.

Complainant's counsel offer a stipulation, marked Exhibit "A" and herewith returned.

Complainant's counsel offer, first, a certified copy of the proceedings in the U. S. House of Representatives in relation
970 to the passage of the act of March 3, 1865, which is marked Complainant's Exhibit "B" and herewith returned.

(Objected to by defendant's counsel as incompetent and immaterial.)

Complainant's counsel offer certified copy of the Journal of the Senate of the United States, 38th Congress, showing the proceedings in the Senate in relation to the passage of the act of March 3, 1865, which is marked Complainant's Exhibit "C" and herewith returned.

(Same objection.)

Complainant's counsel offer certified copy of the secretary of the State of Minnesota of the "memorial" of the Legislature of Minnesota "to the Congress of the United States for an additional grant of lands to aid in the completion of the several lines of railroad and branches in this State, mentioned in the act of Congress approved March 3, 1857, and for an extension of the time limited therein," approved January 24, 1865, which is marked Complainant's Exhibit "D" and herewith returned.

(Same objection.)

Complainant's counsel offer the following extracts from the Journal of the house of representatives of Minnesota, session of 1865:

(Same objection.)

Page 258. "FEBRUARY 21, 1865.

"Mr. Oscar Taylor introduced—

"H. F. 206: A bill for an act to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches.

"Which was read the first time and referred to committee of the whole."

971 Page 292. "FEBRUARY 24, 1865.

"Mr. Oscar Taylor moved that the rules be suspended, and that H. F. 206 be read a second and third times and put upon its final passage.

"The yeas and nays being called for and ordered, there were yeas 26 and nays 9.

* * * * * * *

"The rules being suspended,

"H. F. 206: A bill for an act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches,

"Was read the second and third times and put upon its final passage.

"The yeas and nays being called for and ordered, there were yeas 25, nays 6.

* * * * * * *

"So the bill was passed and its title agreed to."

Page 358. "MARCH 1, 1865.

"The following message was received from the senate:

"'Mr. SPEAKER: I have to announce to the house of representatives that the senate has passed the following bills, to wit:

* * * * * * *

"'H. F. 206: A bill to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches,

"'With sundry amendments thereto, and respectfully ask the concurrence of the house of representatives in said amendments.

"'E. B. AMES,

"'*Secretary of the Senate.*'"

972 Page 360. "MARCH 1, 1865.

"The following message was received from the senate:

"'Mr. SPEAKER: I am directed to announce to the house of representatives that the senate has passed the following resolution, to wit:

"'Resolved, That the house of representatives be, and they are hereby, respectfully requested to return to the senate

"'H. F. 206: A bill for an act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches,

"'With the senate amendments accompanying the same.

"'E. B. AMES,

"'*Secretary of the Senate.*'"

* * * * * * *

"The following message was received from the senate:

"'Mr. SPEAKER: I am directed to announce to the house of representatives that the senate has passed

"'H. F. No. 206: A bill for an act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches,

"'With amendments thereto.

"'E. B. AMES,

"'*Secretary of the Senate.*'"

* * * * * * *

Page 361. "MARCH 1, 1865.

"On motion of Mr. Oscar Taylor,

"H. F. 206 was taken from the table.

"The question was taken on the concurrence of the house to the senate amendments to H. F. 206.

973 "The yeas and nays being called for and ordered, there were yeas 24 and nays 7.

* * * * * * *

"So the amendment was concurred in."

Page 407.

"Mr. Keister, from the committee on enrolled bills, reports that they have examined and found correctly enrolled

"H. F. 206: A bill for an act to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches."

(Same objection.)

Complainant's counsel offer the following extracts from the printed volume of the Journal of the senate of Minnesota, in session of 1865:

Page 203. "FEBRUARY 25, 1865.

"The following message was received from the house of representatives:

"'Mr. PRESIDENT: I am directed to announce to the senate that the house has passed the following bills:

* * * * * * *

"'H. F. 206: A bill for an act to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches,

* * * * * * *

"'In the passage of which the concurrence of the senate is respectfully requested.

"'ANDREW C. DUNN,

"'*Chief Clerk House of Representatives.*'"

974 Page 205. "FEBRUARY 25, 1865.

"On motion of Mr. Rice,

"H. F. No. 206 was read the first time."

Page 215. "FEBRUARY 27, 1865.

"H. F. 206 was read the second time."

Page 220. "FEBRUARY 27, 1865.

"On motion of Mr. Rice, the senate resolved itself into a committee of the whole. When the committee arose the chairman reported back

* * * * * * *

"H. F. No. 206, reported progress, and asked leave to sit again."

Page 227. "FEBRUARY 28, 1865.

"Mr. Rice moved we go into a committee of the whole. Carried.

* * * * * * *

"When the committee arose the chairman reported back "H. F. 206, with a recommendation that it pass."

Page 230. "FEBRUARY 28, 1865.

"H. F. 206: A bill for an act to aid and facilitate the completion of the Saint Paul and Pacific railroad and branches,

"Was read the third time by unanimous consent, amended, and put upon its passage.

"And the yeas and nays being ordered, there were yeas 14 and nays 2 as follows: * * *

"So the bill passed and its title was agreed to."

975 Page 239. "MARCH 1, 1865.

"The following message was received from the house of representatives:

"Mr. PRESIDENT: * * * I am also directed to return to the senate H. F. 206, with certain amendments thereto, in accordance with a request of the senate.

"'ANDREW C. DUNN,

"'*Chief Clerk of House of Representatives.*'"

The complainant's counsel offer in evidence a certified copy of the bill "granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America," with the proceedings thereon, in the Senate of the United States, January 12, 1870, which is marked Complainant's Exhibit "E" and herewith returned.

They also offer the proceedings on the same bill in the House of Representatives of the United States, which is marked Exhibit "F" and herewith returned.

They also offer certified copy of the Journal of the Senate, 41st Congress, showing proceedings on same bill, which is marked Exhibit "G" and herewith returned.

They also offer certified copy of the Journal of the House of Representatives of the United States, 41st Congress, showing proceedings on same bill, marked Exhibit "H" and herewith returned.

They also offer certified copy of the proceedings in the House of

Representatives of the United States, 41st Congress, 3d session,
976 amending Senate bill No. 381 and passing the same as amended, which is marked Exhibit "I" and herewith returned.

They also offer the proceedings in the Senate of the United States, March 2 and 3, 1871, on the bill as amended, which is marked Exhibit "K" and herewith returned.

Complainant's counsel offered in evidence certified copies from the Department of the Interior, as follows, to wit:

First. Letter from Gov. Marshall to Secretary of Interior, dated November 1, 1869.

Second. Letter from D. C. Shepard to Hon. D. S. Norton, February 5, 1870.

Third. Affidavits of D. C. Shepard and Francis W. Kimball.

Fourth. Letter from Edmund Rice, president of the St. Paul & Pacific Railroad Company, to the Secretary of the Interior, dated June 9, 1870.

Fifth. Letter from Gov. Austin to the Secretary of the Interior, dated November 9, 1870.

(All of which is herewith returned, marked Complainant's Exhibit "P.")

Complainant's counsel also offer certified copies of letters and papers from the Department of the Interior as follows, to wit:

First. Letter of the Secretary of the Interior to the Governor of Minnesota, dated November 5, 1869.

Second. Letter of the Secretary of the Interior to the Governor of Minnesota, dated December 9, 1869.

977 Third. Letter from the Secretary of the Interior to Hon. D. S. Norton, dated February 16, 1870.

Fourth. Letter from the Secretary of the Interior to Edmund Rice, president, etc., dated June 9, 1870.

Fifth. Letter from the Secretary of the Interior to the Governor of Minnesota, dated November 14, 1870.

(All of which are attached together and marked Complainant's Exhibit "Q" and herewith returned.)

Complainant's counsel also offer in evidence the following telegrams and letters certified by the Department of the Interior, to wit:

First. Telegram of Edmund Rice to the Secretary of the Interior, November 8, 1870.

Second. Telegram of Edmund Rice to the Secretary of the Interior, September 9, 1870.

Third. Telegram of Edmund Rice to the Secretary of the Interior, November 16, 1870.

(All of which are attached and herewith returned and marked Complainant's Exhibit "R.")

Complainant's counsel also offer in evidence certified copies from the Department of the Interior of telegrams as follows, to wit:

First. Telegram from the Secretary of the Interior to Edmund Rice, dated November 9, 1870.

Second. Telegram from the Secretary of the Interior to Edmund Rice, dated September 12, 1870.

(Which are attached together and herewith returned, marked Complainant's Exhibit "S.")

978 Complainant's counsel also offered in evidence certified copy of letter and indorsements from the office of the Commissioner of the General Land Office, dated July 10, 1865, to the register and receiver at Taylor's Falls; also certified copy of letter of same date from Commissioner of the General Land Office to the register and receiver at St. Peter, Minn.; also certified copy of letter to the Commissioner of the General Land Office from the register and receiver at St. Cloud, Minn., dated July 21, 1865; also certified copy of letter to the register and receiver at St. Cloud, Minn., from the Commissioner of the General Land Office, dated August 3, 1865.

(All of which are attached together and herewith returned, marked Complainant's Exhibit "F.")

Complainant's counsel offer in evidence certified copies from the General Land Office of the following letters, to wit: Letter from the Secretary of the Interior to the Commissioner of the General Land Office, dated December 20, 1871; letter from the Secretary of the Interior to the Commissioner of the General Land Office, of date June 18, 1872; letter from the Secretary of the Interior to the Commissioner of the General Land Office, of date September 3, 1872; letter from the Secretary of the Interior to the Commissioner of the General Land Office, dated December 4, 1873, and letter from the Commissioner of the General Land Office to the Secretary of the Interior, dated May 27, 1880, and letter from the Secretary of the Interior to the Commissioner of the General Land Office, dated June 10, 1880.

(All of which are attached together and herewith returned, marked Complainant's Exhibit "U.")

979 EDMUND RICE, a witness called on the part of the complainant, after being duly sworn, testifies as follows:

(By Mr. YOUNG:)

Q. Were you a member of the Legislature of Minnesota in 1865?

(Objected to as immaterial.)

A. Yes, sir.
Q. In which branch?
A. The senate.

Mr. CLOUD: I will reserve an objection to any oral evidence by the witness as to the proceedings of the Legislature of the State of

Minnesota or of the Congress of the United States as incompetent and immaterial.

Q. Were you chairman of the committee on railroads at that session?

A. I was.

Q. Do you remember the bill which passed at that session to aid and facilitate the completion of the Saint Paul & Pacific railroad and its branches, and the proceedings which were had thereon in the Legislature?

A. I have a general recollection of it.

Q. At that time were you an officer of the St. Paul & Pacific Railroad Company; and, if so, what office did you hold?

A. I was president at that time.

Q. Will you state whether the bill for that act and the proceedings thereon were in any way connected with the proceedings in Congress at or about that time upon the act of March 3, 1865, for increasing the land grant? I mean, was it known in the
980 Legislature here, at the time of the proceedings on the legislative bill referred to, that the bill to increase the grant of lands was pending in Congress?

A. I think it was well understood in the Legislature—and that is as far as it got—and by the St. Paul & Pacific Company. It was well understood by our delegation in Washington, too.

Q. What, that these bills were pending, you mean?

A. Yes, sir; that the bills were pending, urged by the Legislature and urged by the delegation from Minnesota in Congress.

Q. Referring to the act of March 3, 1871, authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of the relinquishment of lands, will you state what, if anything, you did to procure the passage of that bill?

(Objected to as incompetent and immaterial.)

A. Well, I went to Washington and urged the passage of that bill as president of the St. Paul & Pacific Railroad Company. I spent considerable time there in the interest of its passage.

Q. Who drew the bill which was introduced into the House of Representatives at Washington in February, 1871, and which finaly passed as a substitute for the bill which had previously passed the Senate?

(Objected to as incompetent and immaterial.)

A. To the best of my recollection, I drew the bill that was introduced in the House. It was referred to the Committee on Lands, of which Mr. Eugene Wilson, of Minnesota, was a member. The bill was finally passed.

Q. At whose instance did you prepare that bill and go to Washington to secure its passage?

981 (Objected to as incompetent and irrelevant.)

A. I went at the instance of the president and members of the executive committee of the Northern Pacific Railroad Company.

J. Gregory Smith, of Vermont, was president; Ex-Judge Rice, of Maine, was vice-president; Gen. Geo. W. Cass was on the executive committee. I do not remember what others I had consultation with; sometimes consulted with Mr. Windom, a member of the board.

Q. Where was the conversation had with the Northern Pacific officers which led to your going to Washington?

(Objected to as incompetent and immaterial.)

A. It was generally had in the office of the Northern Pacific Railroad Company in New York city.

(Defendant's counsel objects to the introduction of any evidence of the conversation between the witness and directors or officers of the Northern Pacific Railroad Company relating to any of the legislation in question as incompetent and immaterial.)

Q. Were these conversations or any of them with the officers or members of the board of directors of the Northern Pacific Railroad Company had at any meeting of the board of directors of that company or of its executive committee?

A. I was never present at any meeting of the board of directors or executive committee while they were in session. I was in the building and on the same floor that their sessions were always held, and I knew when they were being held.

Q. Was your going to Washington at the instance of the officers of the Northern Pacific Railroad Company the result of action taken at such meeting, so far as you know or have been informed?

(Objected to as incompetent and immaterial; also for the
982 reason that it assumes that he went to Washington at the instance of the officers of the Northern Pacific Railroad Company, which has not been shown.)

A. I cannot say that it was. It might be a matter of inference. I do not know that it was. I conversed with Mr. Billings on the subject and others; cannot say how many.

Q. You have stated that you were present on the same floor where meetings of the board of directors or officers of that company were held. Was your talk with the directors or officers of that company which led to your going to Washington had during the time of any of these meetings or immediately afterwards?

(Objected to as incompetent and irrelevant.)

A. It was about the time of their having directors' meetings there in those offices.

Q. Please go on and state just how the conversation took place in its connection, if it had any, with the directors' meetings or meetings of the executive committee of the Northern Pacific Railroad Company.

(Objected to as incompetent and immaterial.)

A. My first conversation, I think, was with Judge Rice and Gov-

ernor Smith, in 1870—about June of that year. The subject came up about the relative positions of the lines under the former acts of Congress—the Northern Pacific and St. Paul & Pacific— and it was designed to change the line of the St. Paul & Pacific, as it was expressed to me by Gov. Smith and Judge Rice; don't know how the conversation originally led to it; think we had previous conversations on the subject. I went to Washington that summer; think Gov. Ramsey introduced in the United States Senate a joint resolution which I prepared in furtherance of that object.
983 The Senate closed without the passage. Then I went to Washington in the winter or spring of 1871, and the passage of this bill was the result of that.

Q. In these conversations in June, 1870, with reference to a change of line of the St. Paul & Pacific railroad, what reason, if any, did the Northern Pacific officers, with whom you stated you talked, give, if any, for wishing to change the line of the St. Paul & Pacific, and what change, if any, did they wish made?

(Objected to as incompetent and immaterial.)

A. They wished to abandon the line of the St. Paul & Pacific railroad from Crow Wing or some point between there and the Falls of St. Anthony to Lake Superior, for the reason that they were building a road from Lake Superior west, which would touch the Mississippi river about the neighborhood of Crow Wing. Then they wished to abandon the line from Crow Wing to a point near Otter Tail Lake, where it would run from there almost the same line as the Northern Pacific west, and would cross their line some point between Crow Wing and Otter Tail Lake on its way to the British possessions.

Q. What reason did they give for wishing this last change of the road from Crow Wing to Otter Tail Lake?

(Same objection.)

A. Because that would be practically the same line. The objection to building two roads on the same line was that it was unnecessary for the business of the country, and that there would be a complication about the land grant. There was another reason: that the system would be more perfect if the line went directly from St. Cloud to St. Vincent than if they went by way of Crow Wing.
984 Q. What line, if any, did they propose or wish to have adopted in the place of the line proposed to be abandoned from Crow Wing to Otter Tail Lake?

(Same objection.)

A. It was to start a line from St. Cloud and go direct on some practicable route to St. Vincent. Added to that, it would go through a greater extent of country.

Q. What was the next conversation?

A. The next conversation was in the spring of 1871, in reference to going to Washington to secure the desired change by legislation.

Q. Where was that conversation and with whom?

A. That was in the offices of the Northern Pacific Railroad Company in New York city, with Gov. Smith and Judge Rice.

Q. Do you remember Mr. Rice's initials?

A. Richard D. Rice.

Q. What, if anything, was said in this last conversation in regard to the proposed change of line?

A. I cannot say there was anything more said then; it was to secure that object—to accomplish that object.

Q. Was anything said as to how your expenses were to be paid or by whom?

(Same objection.)

A. The Northern Pacific Railroad Company were to pay my expenses.

Q. Do you remember any other conversations with the Northern Pacific officials on this subject other than those you have mentioned?

A. I had a great many conversations with different directors about that time.

985 Q. With what directors? Can you give their names?

A. I talked with Billings, A. H. Barney, and——

Q. Did you have any talk with Mr. W. G. Moorhead?

A. I think not, until after the passage of the bill. Yes; I did have before the passage of the bill. I had a conversation with him.

Q. Was there any other person co-operating with you at Washington on behalf of the Northern Pacific Railroad Company to secure the passage of this bill?

A. I think, shortly before the bill was passed, Mr. M. H. Dunnell was there.

Q. How did he come to be there?

A. He went there at the instance of Mr. Becker, who was president of the First Division of the St. Paul & Pacific Railroad Company. He turned in and assisted me in passing the bill that finally passed.

Q. By whom were your expenditures repaid you that you incurred in obtaining this legislation?

(Objected to as incompetent. It assumes that they had been paid.)

A. They were paid by the Northern Pacific Railroad Company.

(Book shown witness, which purports to be a record of proceedings of the board of directors of the St. Paul & Pacific Railroad Company.)

Q. Is this the book of the proceedings—the record—of the board of directors of that company?

A. Yes, sir.

Mr. CLOUGH: I object to everything shown in said book.

(The attention of witness called to a record of the proceed-
986 ings at a meeting of the board of directors of the St. Paul & Pacific Railroad Company held at No. 120 Broadway, New York city, March 22, 1871:)

"Present: E. Rice, J. Gregory Smith, R. D. Rice, and Wm. G. Moorhead.

"On motion of Mr. Smith, the election of a secretary was proceeded with.

"On a vote, Walter Hinchman was unanimously elected secretary.

"The president submitted the following bill, which, on motion of Mr. Smith, seconded by Mr. Moorehead, was approved:

"'*The Saint Paul and Pacific Railroad Company to Edmund Rice,* DR.

"'For travelling expenses for four months between St. Paul, New York, and Washington, hotel bills, and expenditures relating to business in the Department of the Interior concerning location of lines, including printing, maps, etc., and relating to the passage of the act of Congress authorizing a change of lines in consideration of a relinquishment of lands, approved March 3d, 1871 ..... $21,950.'"

Q. Was this a correct record of what took place at that meeting?

A. Yes, sir.

Q. Where was that meeting held? At what place?

A. At 120 Broadway, New York city. It was held in the directors' room of the Northern Pacific Railroad Company.

987 Q. Was this bill presented to the board of directors of the Northern Pacific Railroad Company or its executive committee?

A. I suppose it was. I did not see it; was not present at the meeting. I do not know.

Q. Who informed you that the Northern Pacific directors approved this bill?

A. The president of the Northern Pacific Railroad Company.

Q. On what occasion did he tell you that, and where?

A. On that occasion—prior to the meeting of the board of the St. Paul & Pacific Railroad Company directors.

Q. And in what connection with any meeting of the Northern Pacific board did Mr. Smith tell you that?

A. They had just had a meeting of their board of directors, and then, when they adjourned, he told me that; and we had a meeting of our board, and the bill was then approved by the St. Paul and Pacific Railroad Company board.

Q. Who paid the amount of this bill to you—what persons?

(Objected to as before.)

A. It was paid by Mr. Barney, the treasurer of the Northern Pacific Railroad Company.

Q. Did he pay you in money or by checks?

A. Checks, I think. I don't remember whether there was more than one, but presume there was.

Q. The terms in this bill, "Travelling expenses for four months between St. Paul, New York, and Washington, hotel bills"—in what business were these incurred?

A. The business referred to in the bill itself.

Q. What business was there in the Department of the
988 Interior that you had there? You mention business in the Department of the Interior. What business was it?

A. It was getting the maps of location approved.

Q. What maps?

A. The approved maps of survey of the line.

Q. Under what act? Under the act of 1871? What lines were specified?

A. I couldn't specify any lines except those that were specified under the charter of the company. I don't remember when the lines were finally located. I conducted the whole of that—making maps, surveys, etc.

Q. You remember the line that was located from Crow Wing, some time in 1869, up to Otter Tail Lake. Was that one of the lines?

A. I presume it was.

Q. What lines did these expenditures relate to where they are specified in the bill as expenditures relating to the business in the Department of the Interior?

A. These expenditures were for surveys made for a line direct from Crow Wing to St. Vincent to demonstrate that a direct line between those two points was impracticable, and for surveys from Crow Wing by way of Otter Tail *and* to St. Vincent, and to demonstrate that that line was practicable, and the only practicable line from Crow Wing. The bill pending in the Senate from Breckenridge north to St. Vincent would swallow up or rather overlie the grant from Crow Wing to St. Vincent. Our object was to show that our line could not be built to St. Vincent except by way of Otter Tail Lake and the valley of the Red River, and that would necessarily conflict with the route specified in the Senate bill from
989 Breckenridge down the same valley, which Mr. Becker was promoting as president of the First Division Company.

Q. At the time these expenditures were paid and this bill presented and paid did the St. Paul & Pacific Railroad Company have any pecuniary means to pay it?

(Objected to as above.)

A. I paid it myself, and they afterwards paid me. The St. Paul & Pacific Railroad Company had the franchises and land grant, but no money, and I paid it myself.

Q. At the time—March 21, 1871 (the date of this bill)—who owned the stock of the St. Paul & Pacific Railroad Company?

(Objected to as before, and also on the additional ground as not the best evidence.)

A. The stock was nearly all owned by the Northern Pacific Railroad Company or held in trust for them.

Q. (Book shown witness.) What is this book?

A. This is a stock certificate book of the St. Paul & Pacific Railroad Company.

(Witness' attention is called to certificate 24, certificate 25, certificate 26, each for 10,000 shares, issued to Edmund Rice, and also the transfers on the back of each of the same, signed "Edmund Rice," and dated March 9, 1870. He is also shown certificate No. 27, for 10,000 shares, dated March 14, 1865, and certificate No. 33, dated November 9, 1867, for 9,366, issued to Edmund Rice; certificate No. 34, for one share; No. 35, for one share; 36, for one share; 37, for one share; 38, for one share; 39, for one share; 40, for one share; 41, for one share; 42, for one share, all issued to Edmund Rice, and all bearing date November 9, 1867, with the transfers thereon.

He is also shown certificate No. 44, for one share, issued to
990 Alexander Mitchell; 45, one share, issued to M. L. Sykes, Jr.; 46, one share, issued to John M. Burke, all dated December 22, 1869.)

Q. Please state at what time certificates of the stock represented by certificates 24, 25, 26, and 27 were—what time did you dispose of the stock represented by those certificates, and to whom? Take the book and give the history of the stock all the way through.

(Same objection.)

A. You are asking me something I cannot state. I can state generally for your information. In the first place, the stock was something like five million, placed in my name, and I assigned three-fifths of it clear, which my brother negotiated, to the Northwestern Railway Company in 1867 or 1868. The other two-fifths of the stock was still retained by me, and stood in my name. The various certificates of one share each were issued from time to time to qualify directors. Subsequently the Chicago & Northwestern Railway Company transferred those three-fifths to the agent of the Northern Pacific Railroad Company in trust for that company. I cannot refer to the date.

Q. Was it before you had these conversations with them about getting this resolution?

A. I think that it was.

Q. The transfer was to Jay Cooke in trust for the Northern Pacific Railroad Company?

A. That is my recollection. Before I disposed of the two-fifths we had a conversation about the change of these lines. Subsequent to the conversation about changing the lines I transferred my two-fifths in the same way to the Northern Pacific Railroad Company.

Q. If I understand correctly, in the first place your com-
991 pany did make arrangements with the Chicago and Northwestern Railway Company?

A. Yes, sir.

Q. Can you take this book and give the date when that was made?

A. The book probably would show.

(Witness shown pages 75 and 76 of the record of proceedings of the directors of the Saint Paul and Pacific Railroad Company, being the minutes of the meeting of December 23, 1869.)

Q. Whose handwriting is that record in?

A. In mine.

Q. Examine that and state if the purchase of the three-fifths by the Northwestern Company was prior to the date of this meeting, December 23, 1869.

A. The contracts were made with the Northwestern Railway Company prior to that time. I think about that time the contract was ratified.

(Plaintiff's counsel offers in evidence the minutes of the directors' meeting, December 23, 1869, on pages 75 and 76, being minutes of the meeting of December 23, 1869, a copy of which is herewith returned, marked "L.")

(Witness shown minutes of meeting, on page 81, under date of July 22, 1870.)

Q. Was the transfer from the Northwestern Railway Company to the Northern Pacific Railroad Company prior to the date of that meeting?

A. Yes, sir.

Q. Was Mr. Samuel Wilkeson, who was elected a director at that meeting and who acted as secretary—what office, if any, did he hold in the Northern Pacific Railroad Company at that time?

992 A. He was secretary.

Q. What connection had Eugene Putnam?

A. He was private secretary of the president of the Northern Pacific Railroad Company.

Q. Referring to the record of the meeting February 1, 1871, on page 83, will you state whether the sale of your own stock to the Northern Pacific Railroad Company was prior to the date of that meeting?

A. Yes; it was. My stock was transferred to them in October, 1870.

(Complainant's counsel offer in evidence minutes, on pages 83, 84, and 85, of a meeting February 1, 1871, a copy of which is returned herewith and marked Exhibit "M.")

(Complainant's counsel offer in evidence stock certificates, with the stubs and the transfers and indorsements on the back, numbered as follows in the book heretofore referred to, Numbers 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 59, copies of which are herewith returned and marked Exhibit "N.")

Q. How long did you continue president of the St. Paul & Pacific Railroad Company?

A. Until the thirty-first of December, 1871.

Q. After you sold out your stock in 1870, and after you had procured the passage of the act of March 3, 1871, what part did you take in the management of the affairs of the company or the enterprise it was conducting?

A. I superintended the survey of the new line. I filed the maps with the Secretary of the Interior and secured their approval. I think that it was before the eighteenth of November; don't
993 recollect. I went back and forth to the city of New York. I filed the map of the location under the act of 1871.

(A certified copy of map of the definite location of 1871 is now offered in evidence, marked Exhibit "O.")

Q. State whether this is a map of the location, made under your direction, of the branch line under the act of March 3, 1871.

A. Yes, sir; it is.

Q. Who managed and controlled the matter? What, if anything, did the officers of the Northern Pacific Railroad Company have to do with the location of this line?

(Objected to as before.)

Q. (continued). Go on and give the history of it; what directions, if any, were given——

A. They were informed of everything that was done—the officers of that company. The company was informed of the location and of my acts and of the approval at Washington.

Q. Did they give you any directions in relation to the line or the location of it or make suggestions to you with regard to it?

A. They directed me to make the location.

Q. What suggestions did they make, if any, with regard to where and how it should be located? Who was engineer?

A. I think Col. Owens was chief engineer. He was an engineer for the Northern Pacific Railroad Company at that time.

Q. You did not quite answer my question as to whether you had any suggestions from officers of that company.

A. I had my directions from Gov. Smith.

Q. Did you know anything about the controversy that arose at Washington about the propriety of this location? Did you have anything to do with that?

994 A. Yes, sir.

Q. What did you have to do with that? Were you there at the time of that controversy?

A. I was there before the Secretary of the Interior. There was a question of its coming in conflict with the Northern Pacific Railroad Company's location.

Q. What time was that?

A. It was some time before the approval of this survey and location.

Q. What was that controversy, and who was it between? Was it a controversy with Judge Emmett?

A. Yes, sir; there was a controversy about that.

Q. You remember that controversy?

A. Yes, sir; I do.

Q. Were you present at the time that was discussed before the Department of the Interior?

A. I think not. I had a good many consultations with officers of the Northern Pacific Railroad Company.

Q. What position did they take in regard to this location?

A. They took the position that I did—that Judge Emmett had no vested rights.

Q. State whether or not the Northern Pacific Railroad Company claimed that this location was right and proper that you had made.

A. Yes, sir.

Q. Did they do anything, as far as you know, to maintain it before the Department?

A. I was told that they did. I only know from them.

Q. From whom?

A. Judge Rice; and I saw the statement of the Secretary of the Interior, in which he referred to it in making his decisions.

995 Q. This controversy between the St. Paul & Pacific and the Northern Pacific Railroad Companies in regard to the location of this line occurred in 1873, did it not—the conflict between them?

A. I do not really know whether there was a controversy. I was thinking of something else when you first spoke of it.

Q. After the Northern Pacific Railroad Company acquired its interest in the affairs of the St. Paul & Pacific Railroad Company, is it not a fact that you were the only one of the original directors of the St. Paul & Pacific Railroad Company that remained in the board? The others were all Northern Pacific directors, were they not?

A. All directors of that company.

Q. What connection did Walter Hinchman have with the Northern Pacific Railroad Company?

A. He was private secretary to Gov. Smith, who was president.

Q. After the Northern Pacific Railroad Company had acquired that stock state who really controlled and managed its affairs—that is, what persons managed it—what officers.

(Same objection as before.)

A. It was managed by the officers of the Northern Pacific Railroad Company, acting as officers of this company.

Q. State, as far as you are able, to what extent the officers and directors of the Northern Pacific Railroad Company controlled the action, business, and affairs of the St. Paul & Pacific Railroad Company after it acquired the stock you have mentioned.

(Objected to as before.)

A. They substantially controlled it in every respect.

996 Q. I will ask you if you become cognizant of any such action on the part of the Northern Pacific Railroad Company as is mentioned in this paper that I now offer in evidence?

(Objected to as before.)

A. I became cognizant in a general way, by hearsay, that Mr. Moorhead and others were authorized to build the lines as agents for the Northern Pacific Railroad Company, as expressed in the resolution.

Q. You had not seen the resolution?

A. No, sir; I never saw it.

(Complainant's counsel offer in evidence two resolutions passed by the board of the Northern Pacific Railroad Company—one on the fifteenth of February, 1871, and the other the tenth of May, 1871—with certificate of the appointment of a committee under one of these resolutions, all under the corporate seal and certificate of the secretary of the Northern Pacific Railroad Company, a copy whereof is hereto returned, marked Exhibit "O²," in place of the original document, by consent.)

Q. Do you remember the fact that this branch of the road, as located under the act of 1871, was bonded for $15,000,000?

A. Yes, sir; very well.

Q. The bonds were issued by the St. Paul & Pacific, First Division, and the mortgage or trust deed securing them by the St. Paul & Pacific Railroad Company?

A. Yes, sir.

Q. Do you know who had the negotiation and management of the sale and disposition of these bonds?

(Same objection.)

A. I understood Mr. Moorhead. Some one associated with him negotiated the sale. I had nothing to do with it. I simply executed the deed of trust.

997 Q. When did you first learn that there was any controversy in regard to these lands between the St. Paul & Pacific Railroad Company and the Northern Pacific Railroad Company?

(Objected to as before.)

A. I do not know that I could tell that I had heard of it until about the time I was examined in this case as a witness.

Q. While you were connected with the St. Paul & Pacific Railroad Company, as president and director, was the subject of this overlap or conflict under discussion?

A. It was spoken of.

Q. In what way and how?

A. It was spoken of at the time that the bill was drawn.

Q. Who spoke of it? Who did you speak with?

A. I spoke with Mr. Windom, Governor Smith, and others.

Q. What was said about it, if anything?

(Objected to.)

A. The substance of the talk was that the bill should be so prepared as to give the St. Paul & Pacific Railroad Company a full grant—all the lands they could—as the Northern Pacific could make up its deficiencies anywhere.

Q. Did you ever hear anything contrary to that in your discussions?

A. No, sir.

Q. That was the way the matter was discussed when the measure was being pressed before Congress?

A. Yes, sir.

Q. At that time you were president of the company and they were officers of the other?

A. Yes, sir.

998 Q. You did nothing on the part of the St. Paul & Pacific Railroad Company, as an officer or otherwise, after the location of the line of 1871, did you?

A. I do not remember. If I recollect correctly, I resigned to have my resignation take effect the first of October, and Gov. Smith desired it extended till the last of the year 1871.

Q. Substantially your connection with the acts on the part of the company ceased in the year 1871?

A. Yes, sir.

Q. You had a salary?

A. I had $5,000 a year.

Q. Who paid you your salary?

A. The Northern Pacific Railroad Company.

(Cross-examination waived. Witness excused.)

EDMUND RICE.

SATURDAY, *October* 15, 1884.

GEORGE L. BECKER, sworn on behalf of the complainant, testifies as follows:

Questions by H. R. BIGELOW, Esq.—direct examination:

Q. During what period were you president of the First Division of the St. Paul & Pacific Railroad Company?

A. From February, 1864, to some time, I think, in the year 1876.

Q. Had you, prior to that time, been connected with the St. Paul & Pacific Railroad Company?

A. Yes, sir.

Q. In what capacity?

A. Land commissioner.

999 Q. About what time, if ever, did the First Division Company contemplate the building of a line from the neighborhood of St. Cloud to St. Vincent?

A. The arrangement to do that was made in December, 1870.

Q. Were you in the city of New York in November or December of 1870?

A. I was there in December, 1870. I was there also in Novembe. I returned in December.

Q. Who had been some time prior to that point of time the owner of the stock of the First Division Company?

(Objected to as incompetent and immaterial)

A. E. Darwin Litchfield, of London, England.

Q. Was there a change made in such ownership about that time?

A. There was.

Q. Who bought it?

(Objected to as incompetent and immaterial.)

A. The Northern Pacific Railroad Company.

Q. Was that transferred in writing—that is, was there any written agreement?

A. Yes, sir.

(Paper shown witness.)

Q. Is this a copy of an agreement between Litchfield and the Northern Pacific Railroad Company?

A. It is.

(Complainant's counsel offer this paper in evidence, and it is herewith returned, marked Exhibit "V." Defendant's counsel objects to the same as incompetent and immaterial, but the objection of incompetency is not to include the fact that is a copy and not the original.)

1000 Q. I will show you another agreement, bearing date November 22, 1870. I will ask you if that was executed at the same time?

A. The memorandum of that agreement was made on the twenty-second of November, 1870, in New York.

Q. By whom was that executed?

A. It was executed by the First Division of the St. Paul & Pacific Railroad Company, by George L. Becker, president, and signed by Mr. L. Willmar and Mr. W. G. Moorhead.

Q. Who was Mr. Moorhead?

A. He was director in the Northern Pacific Railroad Company.

(Complainant's counsel offer said agreement in evidence, which is marked Exhibit "W," and herewith returned. Same objection as before.)

Q. Was there a meeting of the directors of the First Division Company held in the city of New York at about that time?

A. There was a meeting of the directors, held the twenty-ninth of November, 1870, at St. Paul.

(Complainant's counsel offer in evidence from the book of minutes of the First Division of the St. Paul & Pacific Railroad Company the proceedings of that meeting, held the twenty-ninth day of November, 1870, and herewith returned, marked Exhibit "X." Objected to as before.)

Q. I notice that at that meeting certain directors resigned and others were appointed in their places. The substitutes were J. Gregory Smith, William G. Moorhead, and Richard D. Rice. What relation did those three gentlemen sustain to the Northern Pacific Railroad Company at that time?

(Objected to as before.)

1001 A. Smith was president and director of the Northern Pacific Railroad Company. William G. Moorhead was director. Rice was vice-president.

(Complainant's counsel offer in evidence the proceedings of a meeting of the board of directors of the First Division Company, held the twenty-second day of December, 1870, marked Exhibit "Y." Objected to as before.)

Q. How long did Mr. Smith remain president of the Northern Pacific Railroad Company—for several years?

A. Yes, sir.

Q. During what year were you connected with the construction of the railroad from St. Cloud to St. Vincent, known as the St. Vincent Branch?

A. I was connected with it from the time this arrangement was made, December of 1870, until it went into the hands of a receiver.

Q. About what time was that?

A. In the summer of 1873, or fall.

Q. Who had the principal charge of that construction?

(Objected to as before.)

A. I had.

Q. In what capacity?

A. The agent of Mr. Wm. G. Moorhead.

Q. In what capacity did Mr. Moorhead act in connection with that construction?

A. He acted as contractor for the construction of the line.

Q. Do you know how Mr. Moorhead came to be contractor?

(Objected to as before.)

A. I do. At the time of that meeting, in November, 1870,
1002 an agreement was made between Mr. Litchfield and the Northern Pacific Railroad Company. It was agreed that Mr. Moorhead should assume that relation. The contract was made with him accordingly for the construction of the line.

Q. Do you know whether he was a member of any committee of the Northern Pacific Railroad Company having that interest in charge or view?

(Objected to as before.)

A. I couldn't speak from my own knowledge about that.

Q. Are you familiar with the legislation had in the spring of 1871 with reference to the extension lines?

A. The legislation in Congress?

Q. Yes.

A. I used to be familiar with it.
Q. Had you anything to do with the procuring of that act?
A. I had.
Q. Had the Northern Pacific anything to do with the procuring of the act of March 3, 1871?

(Objected to as before.)

A. They had.
Q. Were they active in promoting that legislation?
A. They were.
Q. Had you correspondence with the company or its president on that subject?
A. I had.
Q. Mr. Becker, had you a telegram from the president of the Northern Pacific Railroad Company on that subject on December 12, 1870?

(Objected to.)

1003 A. I did have a telegram, dated Springfield, Massachusetts, December 12th, and received by me December 13th. The telegram is as follows:

"SPRINGFIELD, MASS., 12 *Dec.*, 1870.

"To Geo. L. Becker:

"Call meeting of your board to be held in New York Wednesday, 21st inst. Bring your treasurer and transfer books and all papers necessary to effect the mortgage and bonds. Reply to Revere House, Boston.

"J. G. SMITH."

Q. State when you received another from him.
A. Another telegram, dated Boston, 13 Dec., 1870, received by me on the 14th Dec., 1870.

(Objected to.)

Q. How does that read?
A. It reads as follows:

"BOSTON, *Dec.* 13, 1870.

"To Geo. L. Becker:

"Please call meeting at our office, 120 Broadway. Judge Rice will not be there. Bring some one to make a quorum. The secretary is the proper person to bring if he can transfer stock.

"J. G. SMITH."

Q. When did you receive another?

(Objected to.)

A. I received another as follows:

"NEW YORK, *February* 2, 1871.

"To Geo. L. Becker:

"Please telegraph your friends at Washington to give their sup-

port to the bill which will be introduced by Mr. Wilson,
1004 at our request, as a substitute for yours. Reply. Have you received Mr. Willmar's letter of January 12th, a copy of which I have, and are you prepared to make a transfer? When will you be prepared to come here with transfer books, etc., and close the matter? It is important that you do so in order that bonds may be issued forthwith.

"J. G. SMITH, *Pres't.*"

Q. When did you receive another?

(Objected to.)

A. I received another as follows:

"MARCH 8, 1871.

"To Geo. L. Becker, New York:

"Have you forwarded any bonds to Willmar? If so, how many? A meeting should be called soon to act upon a recent act of Congress changing our line. Did Willmar authorize you to draw for $100? Reply.

"J. G. SMITH."

Q. When did you receive another?

(Objected to.)

A. The 13th of March, 1871. It reads as follows:

"NEW YORK, *March* 13, 1871.

"To Geo. L. Becker:

"Please call a meeting of your board of directors at my office, in New York, for Tuesday, March 21st. Important.

"J. GREGORY SMITH."

Q. When did you receive another?

(Objected to.)

A. The 14th of March, 1871. It reads as follows:

1005 "MARCH 14, 1871, NEW YORK.

"To Geo. L. Becker:

"We think we shall have a quorum. I have called a meeting of my own board at the same time.

"J. GREGORY SMITH."

Q. When did you receive another?

(Objected to.)

A. June 6, 1871. It reads as follows:

"NEW YORK, *June* 6, 1871.

"To Geo. L. Becker:

"Adopt for the road between Sauk Rapids and Brainerd specification used on the Northern Pacific railroad, except regarding the embankments 14 feet wide, and providing that culverts, abutments,

piers, and bridges should be built of stone where they can be had at reasonable cost. No piling or trestle-work to be allowed on the road except by special order of company. Specifications for piling had better be omitted entirely. By resolution of our board at last meeting all bids were required to be opened at board meeting and contracts awarded. You had better get bids in and bring with you here, and I will call special meeting. Notify when they will be in. Lee will furnish you copy of specifications.

"J. GREGORY SMITH."

Q. When did you receive another?

(Objected to.)

A. I received another as follows:

1006 "NEW YORK, *June* 26, 1871.

"To Geo. L. Becker:

"Meeting Tuesday, July 11th. You are by resolution requested to attend.

"SAMUEL WILKESON."

Q. Who was Samuel Wilkeson?

A. He was secretary of the Northern Pacific Railroad Company.

Q. When did you receive another?

(Objected to.)

A. I received another as follows:

"ST. ALBANS, *September* 21, 1871.

"To Geo. L. Becker:

"Have telegraphed various contractors to meet committee in New York 26th inst.; would like to have you present. Please have profile of St. Cloud line, at least as far as junction west of Otter Tail, at meeting if possible. Will ascertain what iron we have and let you know directly.

"J. GREGORY SMITH."

Q. When did you receive another?

(Objected to.)

A. December 29, 1871. It reads as follows:

"ST. ALBANS, VT., *Dec.* 29, 1871.

"Geo. L. Becker, St. Paul:

"By referring to the resolution of the Northern Pacific railroad directors you will see that a good and sufficient guaranty for
1007 the delivery of the bonds is required. Will a simple vote pledging the faith of the city be a sufficient guaranty under the resolution?

"J. GREGORY SMITH."

Q. Do you know what bonds were referred to there?

A. Bonds of the city of St. Cloud, to be used in aid of the con-

struction of the bridge across the river there for the St. Vincent line.

Q. When did you receive another?

(Objected to.)

A. December 27, 1871, I received a telegram dated—

"ST. ALBANS, VT., *Dec.* 26, 1871.

"Geo. L. Becker:

"Secretary of the Interior accepts St. Paul & Pacific relinquishment of lands, and has transmitted a map of the amended line from St. Cloud to St. Vincent to the Commissioner of the General Land Office. The map will be considered as filed December 19th.

"J. GREGORY SMITH."

Q. When did you receive another?

(Objected to.)

A. I received another the second of January, 1872. Telegram dated—

"ST. ALBANS, VT., *Jan.* 2, 1872.

"Geo. L. Becker:

"Letter received. I feel disposed to consider guaranty good as far as I am concerned. Will submit it to board.

"J. GREGORY SMITH."

Q. What guaranty does that refer to?

1008 A. It refers to guaranty spoken of in previous telegrams with reference to bonds of the city of St. Cloud.

Q. Where did you receive those telegrams?

A. Here, at St. Paul; at the office of the First Division Company.

Q. They are in relation to the issuance of bonds for the construction of this First Division extension line?

A. They were.

Q. And the fifteen million issue of bonds?

A. They were.

Q. Who was Mr. Willmar, referred to in one of those telegrams?

A. He was a director of the First Division of the St. Paul & Pacific Railroad Company.

Q. What else had he to do with the bonds?

A. He represented the firm of Lippman, Rosenthal & Co.

Q. Please state the manner in which these bonds were negotiated and the amount of proceeds received.

(Objected to as before.)

A. The bonds were sent to L. Willmar——

Q. What I want is that you should state exactly what you did with the bonds and how they passed from you.

A. I executed the bonds as president of the First Division of the St. Paul & Pacific Railroad Company and countersigned them as trustee; sent them to Mr. William G. Moorhead, at Philadelphia, who

was also a trustee. He countersigned and sent them to L. Willmar, London, England.

Q. Then what was done to get the money on them? You say it was obtained; through what channels did it go?

(Objected to.)

1009 A. The money was received from the sale of those bonds by orders drawn by myself upon Lippman, Rosenthal & Co., as the moneys were required here for construction purposes.

Q. To whom did the moneys come on those orders?

A. My impression is that they were payable to the order of different persons. I do not know but that they were all payable to the order of Mr. Moorhead. They were all sent to him. I sent them all to him.

Q. Was there any dispute between the Northern Pacific Company and the First Division Company with reference to the land grant, where the grant of the St. Paul & Pacific Railroad Company and that of the Northern Pacific Railroad Company conflict or overlap?

A. There was.

Q. When did that first arise—that is, I mean when was their first dispute it?

A. I called the attention of Mr. Wm. G. Moorhead to the matter in a letter which I wrote on the 25th of December, 1871.

Q. Up to that time there had been no claim made by the Northern Pacific railroad as against the St. Paul & Pacific?

A. It had been a subject of conversation between myself and some of the directors of the Northern Pacific that there would be a conflict there prior to that time; that the two branches would conflict with each other. When we were preparing the mortgage and bond the matter came up and we had conversations.

Q. What was the tenor of those conversations?

(Objected to as before.)

A. My conversations were more particularly with Gen. Cass and J. G. Smith.

Q. What relation had Cass to the road?

1010 & 1011 A. He was then a director of the Northern Pacific road. Subsequently he was elected president, as successor to J. Gregory Smith; and Mr. Moorhead, also, he was one of the parties who was interested in that matter.

Q. What was it, in substance?

A. The substance of it was that the Northern Pacific Railroad Company would concede to the St. Paul & Pacific Railroad Company priority of grant for the St. Vincent Extension.

Q. Was that before the bonds were issued—the fifteen million bonds?

A. Yes, sir. While we were getting the papers prepared it became necessary to state in round numbers about how many acres the mortgage covered. In order to get at that amount we had to ascertain for ourselves the probable amount of the land grant. That

question immediately confronted us when we were estimating the amount of the land grant—the number of acres.

Q. The amount as finally estimated and stated in the mortgage was upon that basis?

A. Yes, sir; that the St. Vincent line was to have the priority of grant across the Northern Pacific line.

Q. Now, when did the issue of these bonds commence?

A. In the spring of 1871. I cannot give the exact date, but the pressure was very great to get the bonds as soon as possible after that agreement was made. Some time in the spring of 1871—as early as May—we began to send the bonds abroad.

Q. Did you get out a good many of them that summer?

A. Yes, sir.

Q. What proportion of them, probably?

1012 A. They were issued as fast as we could get them executed by the officers of the company and by the trustees. I gave my attention to it, and they were sent with as little delay as possible.

Q. You say you addressed a letter to Mr. Moorhead on the subject of this grant? At what time?

A. December 25, 1871.

Q. Have you a copy of that letter?

A. I have this printed copy here. I hnve the letter in my letter book.

Q. Was that letter answered?

A. It was.

Q. Have you that letter before you or a copy of it?

A. I have a printed copy of it, dated Philadelphia, January 28, 1872.

Q. That is the answer from Mr. Moorhead?

A. Yes, sir.

Q. Did you write Mr. Moorhead again?

A. I did.

Q. What is the date of that letter?

A. March 5, 1873.

Q. You have a copy of that letter, have you?

A. Yes, sir.

(Complainant's counsel offers in evidence those three letters; also a letter from Gen. Cass, president, of date March 15, 1873; which said letters are fastened together and marked Exhibit "Z," and herewith returned.)

(Objected to as before.)

Q. Were you before the department at Washington, in 1872, upon application for a revocation of the order obtained in behalf of

1013 the Minneapolis & St. Cloud Railway Company, revoking the order withdrawing the lands of the St. Vincent Extension?

A. I was before the Secretary of the Interior.

Q. What, if anything, was the action of the Northern Pacific railroad with reference to the same question?

(Objected to as before.)

A. I went there more particularly at the instance of the Northern Pacific Railroad Company, to induce the department to change its order. That was in the month of July, 1872.

Q. With whom did you confer on those questions at that time?

A. Well, I remember one conversation with the full board.

Q. Where was that?

A. At their office, 120 Broadway, New York.

Q. State what took place at that time.

(Objected to as before.)

Q. I read to them the argument that had been prepared for the Secretary of the Interior—it had been printed—in support of this application.

Q. State, as fully as you are able to, just what transpired.

A. I do not think there was any official action taken in the matter. The board approved fully of the argument. They seemed to be very well satisfied with it. The argument was subsequently made to the Secretary of the Interior, and it resulted in the revocation of the order withdrawing the land.

Q. Did Mr. Wade have anything to do with that?

A. I do not think he had anything to do with that.

Q. In the argument of it, at all?

A. It don't occur to me that he did.

Q. What relation had Mr. Wade to the Northern Pacific Railroad Company?

1014 A. He was attorney for the Northern Pacific Railroad Company. He so signed himself and so acted in Washington. He appeared there subsequently with reference to this other matter.

Q. When was the point first made by the Northern Pacific, so far as you know, that their grant had priority to the St. Paul & Pacific grant?

(Objected to as before.)

A. I did not become aware of it until after that letter of Cass's, March 15, 1873. My impression is it was some time in April or May, 1873, that I was first notified that the Northern Pacific had opposed the claim of the St. Paul & Pacific to priority.

Q. Was that before or after the suspension of the work of the St. Vincent Extension?

A. It was after.

Q. About how long?

A. I should say that the work was suspended the fall previous—the fall of 1872.

Q. What was the occasion of the suspension of work there?

(Objected to as before.)

A. The want of the money to pay for it.

Q. What caused the failure to furnish funds?

A. Failure to place the bonds—to get money on the bonds.

Q. State as definitely as you can just what the trouble was about getting more money. How did there come to be a failure in negotiating the bonds?

(Objected to.)

A. That is a pretty large subject. The bonds had all been sent to Amsterdam and a large part of them negotiated. The in-
1015 terest on the bonds of the First Division Company was falling due in the fall of 1872, I think it was. The question was what provision should be made for paying those coupons. Lippmann, Rosenthal & Co. appeared to be anxious to have the Northern Pacific Railroad Company make the necessary provision for paying those coupons. The Northern Pacific Railroad Company didn't consider itself in a condition to do so. They wanted Lippmann, Rosenthal & Co. to do that. There was a considerable corresponding backwards and forwards by cable on this subject, which resulted in a proposition from Lippmann, Rosenthal & Co. that they would furnish part of it if the Northern Pacific Company and Jay Cooke & Co. would furnish the other part, which they declined to do. The result was that default was made in the interest of the First Division Company. When that default came the sale of the bonds on the fifteen-million issue stopped. Application was made to put the road in the hands of a receiver. The transfer of stock from Mr. Litchfield to the Northern Pacific included all the main-line stock except five shares, which belonged to Mr. Willmar, and all of the branch line excepting 350 shares.

Mr. PINNEY: What proportion was the 350 shares to the whole of the branch line?

A. A very small proportion.

Cross-examination by Mr. CLOUGH:

Q. When else were you an officer or director of the St. Paul and Pacific Railroad Company?

A. I never was a director of the St. Paul & Pacific Railroad Company.

Q. When else were you an officer of the St. Paul & Pacific Rail-
road Company?

1016 A. I was land commissioner of the St. Paul & Pacific Railroad Company. I gave up the position in February, 1864.

Q. Since that time you have been neither an officer or director in that company?

A. Not of the St. Paul & Pacific Railroad Company.

Q. The Mr. Smith from whom you received the telegrams that you read—was he ever connected with the First Division Company in any way?

A. As director.

Q. From what date to what date?

A. Elected director the twenty-ninth day of November, 1870.

Q. How long did he continue?

A. Until the fall of 1872 or winter of 1873.

Q. Samuel Wilkeson, of whom you have spoken—did he ever occupy any official position in the First Division Company?

A. No, sir. My recollection is that he acted as secretary *pro tem.* occasionally.

Q. Wm. G. Moorhead—was he ever a director in the First Division Company?

A. He was.

Q. Between what dates?

A. He was elected the same time Smith was. He stayed with the company longer than Smith did.

Q. Up to about what time did he continue to be a director of that company?

A. Up to 1873, when Mr. Litchfield bought it back.

Q. Geo. W. Cass—was he ever a director or officer of the First Division Company?

1017 A. I cannot state. Cass was elected director July 8, 1873; he remained director until June 9, 1874.

GEO. L. BECKER.

Adjourned until 2 o'clock.

CHARLES B. LAMBORN, a witness called on the part of the complainant, is duly sworn and testifies as follows:

Direct examination.

Questions by Mr. PINNEY:

Q. You reside in St. Paul?

A. Yes, sir.

Q. How long have you lived there?

A. Two years.

Q. State whether or not you are land commissioner of the Northern Pacific Railroad Company.

A. Yes, sir.

Q. How long have you been such?

A. Since May 1, 1882.

Q. Have you in your possession or under your control the patents that have been issued by the United States to that company for lands in Minnesota?

A. Yes, sir.

Q. Will you please produce them?

(Complainant's counsel offer in evidence the patent, produced by the witness, from the United States to the Northern Pacific Railroad Company, dated January 18, 1873, list of lands included in which is hereto annexed, marked Complainant's Exhibit (A 1), being
1018 patent No. 1 to that company. Complainant also offers in evidence patent from the United States to the Northern Pacific Railroad Company, produced by witness, being patent No. 2, dated the twenty-fourth day of April, A. D. 1873, a list of lands contained in which is hereto attached, marked Complainant's Exhibit (B 1). Complainant also offers in evidence patent from the United States to the Northern Pacific Railroad Company, No. 3,

dated the seventh day of July, 1873, a list of lands contained in which is hereto annexed, marked Complainant's Exhibit (C 1). Complainant's counsel also offers in evidence patent from the United States to the Northern Pacific Railroad Company, No. 4, dated November 4, 1873, a list of the lands contained in which is hereto annexed, marked Complainant's Exhibit "D 1." Complainant's counsel also offers in evidence patent from the United States to the Northern Pacific Railroad Company, No. 5, produced by witness, dated November 4, 1873, a list of the lands contained in which is hereto annexed, marked Complainant's Exhibit "E 1.")

Q. If I understand you, Colonel, you say that these are all the patents the Northern Pacific Railroad Company has received of land in Minnesota?

A. To the best of my knowledge.

Q. They have selected other lands and had the lands certified to at the land office?

A. Yes, sir.

Q. Why is it that they have not yet procured the patents on the lands that you have mentioned?

A. I know of nothing except the ordinary delays in the land office. These lists have mostly been made within the last two years—largely within the last year.

1019 Q. I understand there was some—the company had not taken out patents by reason of the fact that there was an act of Congress requiring them to pay for the expense of surveys?

A. My impression is that lists for the lands now pending in the land office for patent were not made up until I commenced to make them, about 18 months ago.

Q. And subsequent to the passage of the act requiring the company to pay the expense of surveys?

A. I presume so.

Q. Colonel, have you in your office a list of the lands so selected and which have been certified by the local land officers and sent on to Washington upon which the company is claiming and seeking patents?

A. We have, in our office.

Q. Would you produce them?

A. Yes, sir; if the court requires.

Q. Please produce true copies of the lists of lands so selected and claimed by the Northern Pacific Railroad Company and not yet patented to it and annex them to your testimony here as Complainant's Exhibit "F 1."

A. I will do so.

Q. In respect to these lands that are claimed in this bill (a list of which will be shown you) and embraced in the patent of January, 1873, will you be able to tell us whether the company has sold any of these lands described in the exhibits of the complainant's bill in this case? And, if so, please furnish the examiner with a list of all lands sold.

A. We can and will do so.

Q. With regard to the lands selected and not patented, has your company been selling them in like manner as though they were patented—any of them?

1020 A. Yes, sir; we filed a list of the lands sold by the company in the State land commissioner's office.

Q. And you say you have sold large portions of the lands selected and not patented?

A. Yes, sir.

Mr. GEO. L. BECKER recalled.

Direct examination continued—questions by Mr. BIGELOW:

Q. In addition to the telegrams already introduced I will ask you when you received another.

(Objected to as before.)

A. I received another as follows:

"NEW YORK, *Sept.* 4, 1872.

"Geo. L. Becker:

"Your trip to Washington great success. Lands restored to market. Everything there looks well. Lippman cables: 'Keep along till Rosenthal returns.' Hope to provide some money to-morrow. Expect fair sailing hereafter.

"W. G. MOORHEAD."

GEO. L. BECKER.

It is admitted that Jesse P. Farley, the receiver mentioned in the suit of Kennedy *et al. v.* The St. Paul & Pacific Railroad Company and others, mentioned in the bill of complaint in this case, was discharged from his trust as such receiver by order of court dated May 8, 1883.

(Complainant's counsel offer in evidence the decree of this court in the suit of Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees, against The St. Paul & Pacific and First Division of the St. Paul & Pacific Railroad Companies, Horace

1021 Thompson, William G. Moorhead, Geo. L. Becker, Chas. A. F. Morris, commencing on page 517 of complete record "F" to 527, inclusive; also the report of Horatio E. Mann, master in chancery, of the sale under said decree, found in said record, on pages 527 to 536, inclusive, embracing so much thereof as refers to the matter of the sale of the property and the form of the certificate referred to in the master's report of sale, found on page 577 of same record down to page 581; also the decree of the court confirming the said sale, found on pages 581 and 582 of said record, copies of which are hereto annexed, marked Complainant's Exhibit "G 1," "H 1," "I 1," and "K 1;" also an act of the Legislature of the State of Minnesota, chapter 412 of the Special Laws of Minnesota for the year 1881, a copy of which is hereto annexed, marked Complainant's Exhibit "L 1." Complainant also offers in evidence the order in the case of John S. Kennedy *et al. vs.* St. Paul & Pacific R. R. Co.,

dated May 31, 1878, conferring further additional authority on Jesse P. Farley as receiver, found on page 510 of complete record "F;" also a further order in respect to the same matter in the same case, found in said record, page 513, dated December 20, 1878, copies of which two orders are herewith returned, marked Complainant's Exhibit "M 1." Complainant's counsel further offers in evidence the petition filed in the original suit of The Northern Pacific R. R. Co. *vs.* The St. Paul & Pacific R. R. Co. *et al.* by the complainant in this cause, filed on the twenty-first day of April, 1884, together with the order made thereon, dated May 3, 1884, which are hereto annexed, marked Complainant's Exhibit "N 1.").

(It is understood that the complainant may furnish and
1022 print with its testimony a list of the acts of the Legislature of the State of Minnesota upon which it relies, which shall be considered in evidence together with the acts of Congress relating to these matters in controversy.)

COMPLAINANT'S EXHIBIT "A."

In the Circuit Court of the United States for the District of Minnesota. (In Equity.)

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Supplemental Bill.

It is stipulated that all testimony taken in the original suit of the Northern Pacific Railroad Company against The St. Paul & Pacific Railroad Company, Jacob S. Wetmore and others, trustees, and others, in this court, may be read in evidence on the hearing of this cause in the same manner and with the same effect as if taken herein.

It is further stipulated that the plaintiff in said supplemental bill shall have until and including October 15, 1884, in which to take proofs in support thereof; that the defendant therein shall
1023 have thereafter until and including November 15, 1884, in which to take proofs in support of its answer thereto, and that said plaintiff shall thereafter have until and including November 25, 1884, in which to take proofs in rebuttal, the times above limited and each of them being subject to enlargement for cause.

It is further stipulated that the said original cause and this cause be set down for final hearing and heard together at the December term, 1884, of this court, subject to the right of either party to apply for a continuance for cause.

Dated September 10, 1884.

R. B. GALUSHA,
Sol'r for St. Paul, M. & M. R'y Co., Plaintiff.
W. P. CLOUGH,
Sol'r for The Northern Pacific Railroad Co., Defendant.

Complainant's Exhibit "A" in this cause.
O. B. HILLIS, *Ex'r.*
62—344

COMPLAINANT'S EXHIBIT "B."

UNITED STATES OF AMERICA, }
City of Washington, D. C. }

I, John B. Clark, Jr., clerk of the House of Representatives of the United States of America, do hereby certify that the paper-writing hereunto attached is a true copy of a bill as engrossed and passed by the House of Representatives and returned to the Senate February 28, 1865, with the endorsements thereon and the amendments of the Senate thereto, now on file in my office, and con-
1924 tains also copies and extracts from the Journals of the House of Representatives of all entries therein in relation thereto, and that I have compared the same with the said original engrossed bill and the Senate amendments thereto and with said entries contained in said Journals.

In testimony whereof I have hereunto set my hand and caused the seal of the House of Representatives to be affixed this twelfth day of April, A. D. 1884.

[Seal of the House of Representatives.]

JNO. B. CLARK, JR.,
Clerk of the House of Representatives U. S.

Endorsed: Complainant's Exhibit "B" in case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co. O. B. Hillis, ex'r.

Thirty-eighth Congress, second session.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved March the third, eighteen hundred and fifty-seven, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," shall be so construed as to grant, and there is hereby granted, to the said State of Minnesota every alternate section of land, designated by odd numbers, for ten sections in width on each
1025 side of the road and branches in said act named: Provided, That indemnity lands to be located in lieu of any sections or parts thereof sold by the United States or to which the right of pre-emption or rights under the provisions of the homestead act have attached, when the lines of said roads and branches are definitely fixed, shall in no case be further than twenty miles from the lines of said road and branches, respectively, and selected for and on account of each of said roads and branches, and shall be taken as near to the deficiency as practicable: Provided, That the said State having already received an additional grant of lands to aid in the completion of the road from Saint Paul and Saint Anthony via Minneapolis to a convenient point of junction west of the Mississippi

river to the southern boundary of the State, in the direction of the Big Sioux river, no lands are hereby granted on account of said road: Provided further, That the provisions of this act shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July second, eighteen hundred and sixty-two, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, and also to the line adopted by said State in lieu of the portion of the line so vacated to the same extent and in the same manner and upon the same limitations and restrictions in every respect as the act to which this is supplementary, and this act shall apply to the lines heretofore first mentioned.

SEC. 2. And be it further enacted, That the time named in the fourth section of the act first mentioned for the completion
1026 of said roads and branches be, and the same is hereby, extended eight years from the expiration of the time named in said section.

SEC. 3. And be it further enacted, That there shall be constructed and completed in running order on each of the lines and branches mentioned and referred to in this act twenty miles of railroad in each and every year: Provided, That the completion of twenty miles of railroad on any part of the branch via Saint Cloud and Crow Wing to the navigable waters of the Red River of the North between Elk River and Saint Vincent shall be a compliance with this section so far as the same is applicable to the Saint Paul & Pacific Railroad Company: Provided further, That the Saint Paul & Pacific Railroad Company shall, in addition, grade, bridge, and put in readiness for ties and iron on each of their branches at least twenty miles each year after the year one thousand eight hundred and sixty-five.

SEC. 4. And be it further enacted, That the lands heretofore granted to the Territory or State of Minnesota to aid in the construction of certain railroads shall be disposed of by said State only for the purposes named in the acts making said grants and in the manner following, namely—that is to say: That a quantity of land, not exceeding one hundred and twenty sections, coterminous with the line of road thus completed for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches, and none other, may be sold; and when the Governor of the said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of any such road
1027 or branch is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the Secretary of the Interior shall issue to the State of Minnesota or to the company to which said lands have been transferred a certificate or certificates for one hundred sections of land for the benefit of the road having completed the ten consecutive miles as aforesaid; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads or branches are from time to time made as aforesaid additional sections of land shall be certified as afore-

said in like manner and for like number until said roads or branches or either of them are completed, when the whole of the lands heretofore granted to said Territory or State shall be certified for the uses aforesaid, and none other: Provided, That if the said roads and portions of roads or either of them are not completed within the time specified by this act the lands appertaining to the unbuilt portions of the road shall revert to the United States.

Passed the House of Representatives February 16, 1865.

Attest: EDWARD McPHERSON, *Clerk.*

Endorsements: H. R. 761. An act extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes.

In the Senate of the United States.

FEBRUARY 28, 1865.

Resolved, That this bill pass with an amendment.

Attest: J. W. FORNEY, *Secretary,*
By W. HICKEY, *Chief Clerk.*

1028 *Journal of the House of Representatives of the United States.*

Thirty-eighth Congress, second session.

(Pages 253, 254.) FEBRUARY 14, 1865.

* * * * * * *

Mr. Samuel F. Miller, from the same committee, reported a bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes; which was read the first and second times.

Pending the question on its engrossment, Mr. Miller moved the previous question; which was seconded, and the main question ordered, and under the operation thereof the bill was ordered to be engrossed and read a third time.

The bill, not being actually engrossed, was left upon the Speaker's table.

Subsequently

Mr. Windom moved a reconsideration of the vote on its engrossment; which motion was passed over.

* * * * * * *

(Pages 261, 262.) FEBRUARY 16, 1865.

* * * * * * *

Mr. Windom called up and the House proceeded to consider the motion submitted by him on Tuesday last to reconsider the vote by which the bill of the House (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes, was ordered to be engrossed and read a third time,

1029 When

Mr. Windom moved the previous question, which was sec-

onded, and the main question ordered, and under the operation thereof the motion to reconsider was disagreed to.

The bill, being engrossed, was then read a third time. The question then being on its passage,

Mr. Windom moved the previous question, which was seconded, and the main question ordered and put, viz: Shall the said bill pass?

And it was decided in the affirmative.

Yeas—84.

Nays—42.

Not voting—56.

The yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are—

* * * * * * *

Those who voted in the negative are—

* * * * * * *

Those not voting are—

* * * * * * *

So the bill was passed.

Mr. Windom moved that the vote last taken be reconsidered, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, That the clerk request the concurrence of the Senate in the said bill.

* * * * * * *

1030 *Amendments.*

In the Senate of the United States.

FEBRUARY 28, 1865.

Resolved, That the bill from the House of Representatives (H. R. 761) entitled "An act extending the time for completion of certain land-grant railroads in the State of Minnesota, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and in lieu thereof insert—

That the quantity of lands granted to the State of Minnesota to aid in the construction of certain railroads in said State, as indicated in the first section of an act entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March third, eighteen hundred and fifty-seven, shall be increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts and as hereinafter provided.

SEC. 2. And be it further enacted, That the first proviso in the

first section of the act aforesaid shall be so amended as to read as follows, to wit: Provided, That the land to be so located shall
1031 in no case be further than twenty miles from the lines of said roads and branches to aid in the construction of each of which said grant is made, and said land granted shall in all cases be indicated by the Secretary of the Interior.

SEC. 3. And be it further enacted, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States: Provided further, That any lands which may have been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension of said grant or grants, shall be deducted from the full quantity of lands hereby granted, and that any lands which may have been so granted shall be strictly applied in accordance with the terms and conditions of said act or acts unless subsequently modified by law.

SEC. 4. And be it further enacted, That the sections and parts of sections of land which by said acts and this grant shall remain to the United States within ten miles on each side of said roads and branches shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the
1032 minimum price as aforesaid: Provided, That actual *bona fide* settlers under the pre-emption laws of the United States may, after the proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the increased minimum price:

And provided also, That settlers under the provisions of the homestead law who comply with the terms and requirements of said act shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

SEC. 5. And be it further enacted, That the land hereby granted shall be subject to the disposal of the Legislature of the State of Minnesota for the purposes aforesaid and no other; and the said railroad and branches shall be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

SEC. 6. And be it further enacted, That the lands hereby and heretofore granted to said Territory or State of Minnesota shall be disposed of by said State for the purposes aforesaid only, and in manner following, namely: When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of said road is completed in a good, substantial, and

workmanlike manner, as a first-class railroad, and the said Secretary shall be satisfied that said State has complied in good faith with this requirement, the said Secretary of the Interior shall issue to the said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus
1033 completed, extending along the whole length of said completed section of ten miles of road and no further.

And when the Governor of said State shall certify to the Secretary of the Interior and the Secretary shall be satisfied that another section of said road ten consecutive miles in extent, connecting with the preceding sections or with some other first-class railroad which may be at the time in successful operation, is completed as aforesaid the said Secretary of the Interior shall issue to the said State patents for all the lands granted and situated opposite to and within the limit of twenty miles of the line of said completed section of road or roads and extending the length of said section and no further, not exceeding ten sections of land per mile for all that part of said road thus completed under the provisions of this act and the act to which this is an amendment and so from time to time until said roads and branches are completed.

And when the Governor of said State shall so certify and the Secretary of the Interior shall be satisfied that the whole of any one of said roads and branches is completed in a good, substantial, and workmanlike manner, as a first-class railroad, the said Secretary of the Interior shall issue to the said State patents to all the remaining lands granted for and on account of said completed road and branches in this act situated within said limits of twenty miles from the line thereof throughout the entire length of said road and branches: Provided, That no land shall be granted and conveyed to said State under the provisions of this act on account of the construction of any railroad or part thereof that has been constructed under the provisions of any other act at the date of the passage of this
1034 act and adopted as a part of the line of railroad provided for in this act; and provided that nothing herein contained shall interfere with any existing rights acquired under any law of Congress heretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads; and provided, further, that said lands granted by this or prior acts shall not in any manner be disposed of, except as the same are patented under the provisions of this act. And should the State fail to complete any one of said roads or branches within eight years after the passage of this act, then the said lands undisposed of as aforesaid, granted on account of said road or branches, shall revert to the United States.

SEC. 7. And be it further enacted, That as soon as the Governor of the said State of Minnesota shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said road and branches, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

SEC. 8. And be it further enacted, That the United States mail shall be transported on said road, under the direction of the Post Office Department, at such price as Congress may by law provide: Provided, That until such price is fixed by law the Postmaster General shall have power to fix the rate of compensation.

SEC. 9. And be it further enacted, That the provisions of this act shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July twelfth, eighteen hundred and sixty-two, entitled "Joint
1035 resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, as though said joint resolution had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated.

SEC. 10. And be it further enacted, That the time mentioned in an act entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State" for the completion of the railroads named in said act be, and the same is hereby, extended two years.

SEC. 11. And be it further enacted, That the last clause of the second section of an act entitled "An act to regulate the compensation of registers and receivers of the land offices in the several States and Territories in the location of lands by States and corporations under general grants from Congress, and for other purposes," be, and the same is hereby, so amended as to read: A map of the change shall be filed with the Commissioner of the General Land Office within three months after the said change of location shall be made.

Amend the title: After "Minnesota" insert "and Iowa."

Attest: J. W. FORNEY, *Secretary*,
By W. HICKEY, *Chief Clerk*.

Thirty-eighth Congress, second session.

* * * * * * *

FEBRUARY 27, 1865.

* * * * * * *

A message from the Senate, by Mr. Cobb, one of their clerks.

Mr. SPEAKER: The Senate have passed * * * and H. R. 761, An act extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes—

With an amendment in which I am directed to ask the concurrence of this House.

* * * * * * *

FEBRUARY 28, 1865.

* * * * * * *

A message from the Senate, by Mr. Cobb, one of their clerks.

Mr. SPEAKER: * * *

The Senate request the return of the bill of the House (H. R. 761)

extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes.

By unanimous consent it was ordered that the said bill (H. R. 761) be returned to the Senate.

* * * * * * *

A message from the Senate, by Mr. Cobb, one of their clerks.

1037 Mr. SPEAKER: The Senate have passed a bill of this House of the following title, viz:

H. R. 761, An act extending the time for the completion of certain land-grant railroads in the State of Minnesota, with an amendment in which I am directed to ask the concurrence of this House.

* * * * * * *

MARCH 3, 1865.

* * * * * * *

Mr. Windom moved that the rules be suspended, so as to enable the House to take up and consider the bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes, with the amendments of the Senate thereto.

And the question being put, it was decided in the affirmative.

Yeas—94.

Nays—37.

Not voting—51.

The yeas and nays being desired by one-fifth of the members present—

Those who voted in the affirmative are—

* * * * * * *

Those who voted in the negative are—

* * * * * * *

Those not voting are—

* * * * * * *

So the rules were suspended.

And thereupon—

The said bill and amendments having been taken up,

The Speaker stated the question to be on agreeing to the said amendments.

1038 Pending which,

Mr. Windom moved the previous question; which was seconded, and the main question ordered, and under the operation thereof the said amendments were agreed to.

Ordered, That the clerk acquaint the Senate therewith.

* * * * * * *

Mr. Pomeroy, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title, viz:

H. R. 761, An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes.

When

The Speaker signed the same.

* * * * * * *

A message was received from the President of the United States, by Mr. Nicolay, his private secretary, notifying the House that he did this day approve and sign bills and joint resolutions of the following titles, viz:

* * * * * * *

H. R. 761, An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes.

* * * * * * *

1039 COMPLAINANT'S EXHIBIT "C."

Journal of the Senate of the United States.

Thirty-eighth Congress, second session.

* * * * * * *

FEBRUARY 16, 1865.
(Page 185.)

* * * * * * *

A message from the House of Representatives, by Mr. McPherson, its clerk.

Mr. PRESIDENT: The House of Representatives * * * and it has passed a bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes, in which it requests the concurrence of the Senate.

* * * * * * *

The bill (H. R. 761) last received from the House of Representatives for concurrence was read the first and second times by unanimous consent and referred to the Committee on Public Lands.

* * * * * * *

FEBRUARY 24, 1865.
(Page 228.)

* * * * * * *

Mr. Harlan, from the Committee on Public Lands, to whom was referred the bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes, reported it with an amendment.

* * * * * * *

1040 FEBRUARY 27, 1865.
(Page 246.)

* * * * * * *

On motion by Mr. Ramsey,

The Senate proceeded to consider, as in Committee of the Whole, the bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes; and the reported amendment, having been amended, on the

motion of Mr. Ramsey, was agreed to as amended; and the bill having been further amended, on the motion of Mr. Harlan, it was reported to the Senate, and the amendments were concurred in.

Ordered, That the amendments be engrossed and the bill read a third time.

The said bill as amended was read the third time.

Resolved, That it pass.

Ordered, That the secretary request the concurrence of the House of Representatives in the amendments.

* * * * * * *

FEBRUARY 28, 1865.

(Page 258.)

* * * * * * *

On Motion by Mr. Harlan,

Ordered, That the secretary be directed to request the House of Representatives to return to the Senate the bill of the House (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes, yesterday passed by the Senate, with amendments.

* * * * * * *

1041 (Page 259.)

A message from the House of Representatives by Mr. McPherson, its clerk:

Mr. PRESIDENT: I am directed by the House of Representatives to return to the Senate, in compliance with its request, the bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes.

* * * * * * *

On motion by Mr. Harlan that the Senate reconsider the vote on the passage of the bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes,

It was determined in the affirmative.

The vote ordering the amendments to the bill to be engrossed and the bill read a third time was also reconsidered. On motion of Mr. Harlan to amend the bill by striking out, in section 6, line 36, after the word "Provided," the words "That nothing herein contained shall interfere with any existing rights acquired under any law of Congress heretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads," and in lieu thereof inserting: That no land shall be granted and conveyed to said State, under the provisions of this act, on account of the construction of any railroad or part thereof that has been constructed under the provisions of any other act at the date of the passage of this act, and adopted as a part of the line of the railroad provided for in this act—

It was determined in the affirmative.

On motion by Mr. Harlan to further amend the bill by inserting

at the end of the sixth section the following proviso:
1042 And provided, That nothing herein contained shall interfere with any existing rights acquired under any law of Congress heretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads.

It was determined in the affimative.

No further amendment being made to the bill,

Ordered, That the amendments be engrossed and the bill read a third time.

The said bill as amended, was read the third time.

Resolved, That it pass.

Ordered, That the secretary request the concurrence of the House of Representatives in the amendments.

* * * * * * *

(Pages 319, 320.) MARCH, 3, 1865.

* * * * * * *

A message from the House of Representatives by Mr McPherson, its clerk:

Mr. PRESIDENT: * * *

The speaker of the House of Representatives having signed an enrolled bill (H. R. 761), I am directed to bring it to the Senate for the signature of its president.

Mr. Howe reported from the committee that they had examined and found duly enrolled the bill (H. R. 761) extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes.

The Vice-President signed the enrolled bill (H. R. 761) last reported to have been examined, and it was delivered to the committee to be presented to the President of the United States.

1043 * * * * * * *

Mr. Howe reported from the committee that they had this day presented to the President of the United States the following enrolled bills and joint resolutions:

* * * * * * *

H. R. 761, An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes.

* * * * * * *

A message from the House of Representatives by Mr. McPherson, its clerk:

Mr. PRESIDENT: * * *

The President of the United States approved and signed, on the second of March, the following acts and joint resolutions:

* * * * * * *

and he this day approved and signed the following acts and joint resolutions:

* * * * * * *

H. R. 761, An act extending the time for the completion of cer-

tain land-grant railroads in the States of Minnesota and Iowa, and for other purposes.

* * * * * * *

UNITED STATES OF AMERICA, } ss:
City of Washington, D .C., }

I, Anson G. McCook, secretary of the Senate of the United States, do hereby certify that the foregoing paper writing hereto annexed is a true copy and correct extracts from the Journals of the Senate of the United States of all entries therein in relation to a bill of the House of Representatives, numbered 761, second session, Thirty-eighth Congress, entitled, when received from the House, "An act extending the time for the completion of certain land-grant railroads in the State of Minnesota, and for other purposes," which title was changed by amendment, as thereinbefore appears, to read "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," and that I have compared the same with said entries contained in said journals.

1044

Given under my hand this fifteenth day of April, A. D. 1884.

ANSON G. McCOOK,
Secretary of the Senate U. S.

Complainant's Exhibit "C" in case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "D."

A memorial to the Congress of the United States for an additional grant of lands to aid in the completion of the several lines of railroad and branches in this State mentioned in the act of Congress approved March 3, 1857, and for an extension of the time limited therein.

To the Congress of the United States:

The Legislature of the State of Minnesota would respectfully memorialize your honorable body to grant to this State additional lands to aid in the completion of the several lines of railroad and branches provided for by the act of Congress approved March 3, 1857, and by the joint resolution approved July 12, 1862, so as to make the quantity of land equal in all to two hundred sections for each twenty miles therein named, for the reasons following:

1045

First. That, although a large amount of work has been done and iron rails and other materials procured for the construction of said roads and branches, and two of them have been put into actual operation for forty and fifty miles, respectively, their extension or the further prosecution of work upon them has become impossible on account of the greatly enhanced prices of iron and locomotives and labor, and in fact of all the materials necessary for the construction and completion of railroads.

Second. That similar increased grants having been made to aid in the completion of other railroads in the Northwestern States, their securities possess advantages in the money markets of the world as ten to six over those of the railroad lines in question.

Your memorialists therefore cannot for a moment entertain the belief that Congress would intentionally withhold the same relief for the aid of the various railroad lines in this State that it has granted to the lines in other States similarly situated.

It is equally important that the time limited for the completion of our roads should be extended, as it has now but two years to run.

Finally, considering that this is a food-producing State, and
1046 that it has no connection by railroad with the system of railroads leading to the Atlantic States, and the avenues to our foodstuffs being thus locked up from the seaboard, except those consisting of wagon roads, and six months' uncertain navigation of the Mississippi of each year; and considering the financial revulsion of 1857, from which we had scarcely recovered when the rebellion called our not unwilling young men from home to aid in its suppression, your memorialists ask with confidence of your honorable body for the prompt consideration of this appeal.

And your memorialists will ever pray, etc., etc.

CHARLES D. SHERWOOD,
President of the Senate.

THOMAS H. ARMSTRONG,
Speaker of the House of Representatives.

Approved January twenty-fourth, one thousand eight hundred and sixty-five.

STEPHEN MILLER,
Gov. of Minn.

Passed the Senate January 18, 1865.

E. B. AMES,
Secretary of the Senate.

Passed the House of Representatives January 23, 1865.

ANDREW C. DUNN,
Chief Clerk of the House of Representatives.

1047 *Senate File No.* 27.

A memorial to the Congress of the United States for an additional grant of lands to aid in the completion of the several lines of railroad and branches in this State mentioned in the act of Congress approved March 3, 1857, and for an extension of the time limited therein.

Filed in this office January 24, 1865.

D. BLAKELY,
Secretary of State.

STATE OF MINNESOTA, DEPARTMENT OF STATE.

I hereby certify that I have carefully compared the foregoing with the original memorial as enrolled, signed by the presiding officers of the two houses of the Legislature, and approved by the Governor, on file in this office, and that the foregoing is a true and correct copy of the same and of the whole thereof.

Witness my hand and the great seal this ninth day of October, A. D. 1884.

[Great Seal of Minn.] FRED. VON BAUMBACH,
Secretary of State.

Complainant's Exhibit "D" in case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

1048 COMPLAINANT'S EXHIBIT "E."

41st Congress, 2d session. (S. 381.)

In the Senate of the United States.

JANUARY 12, 1870.

Mr. Ramsey asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Public Lands and ordered to be printed:

A bill granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding the First Division of the St. Paul & Pacific Railroad Company, the same being a corporation organized under the laws of the State of Minnesota, to construct and operate a railroad from the mouth of the Sioux Wood river, on the western boundary of Minnesota, to the Winnipeg district of British America, on the most eligible railroad route as shall be determined by said company, there is hereby granted to said First Division of the St. Paul & Pacific Railroad Company every alternate section of land or parts thereof, designated by odd numbers, to the extent of ten sections per mile on each side of road, to be selected within twenty miles of the
1049 line of said road; but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to same, or that the same has been reserved for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid from the public lands of the United States nearest to the sections above specified so much land as shall be equal to the amount of such lands as the United States have sold,

reserved, or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands thus indicated by the direction of the Secretary of the Interior shall be reserved and held for the use of said company by the said Secretary for the purpose of the construction and operation of said railroad, as provided by this act: Provided, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in an object of internal improvement or other purpose whatever be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way two hundred feet in width is hereby granted, subject to the approval of the President of the United States: And provided further, That none of the lands hereby granted shall be selected above twenty miles from said road.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which, by the aforesaid grant, shall remain
1050 in the United States, within ten miles on each side of said road, shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price aforesaid: Provided, That actual *bona fide* settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement, and occupation: And provided also, That settlers under the provisions of the homestead act who make their settlement after the passage of this act and comply with the terms and requirements of said homestead act shall be entitled within the said limits of ten miles to patents for amou. 's not exceeding eighty acres each.

SEC. 3. And be it further enacted, That the grant of lands hereby made is upon condition that said company, after the construction of its road, shall keep it in repair and use, and that it will at all times be in readiness to transport troops, munitions of war, supplies, and public stores upon its road for the Government when required to do so by any Department thereof, at the cost, charge, and expense of said company; and the lands hereby granted, held, and reserved as aforesaid shall enure to the benefit of said company as follows: That whenever said company shall have twenty or more consecutive miles of any portion of said railroad line ready for the service contemplated by this act the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be deter-
1051 mined by the Secretary of the Interior; and if it shall appear that twenty consecutive miles of said railroad have been completed in all respects as a first-class road and the commissioners so report under oath to the President of the United States, *and* patents of land as aforesaid shall be issued to said company, confirming to said company the right and title to said lands situated opposite to

and coterminous with said completed section of said road, and from time to time, whenever twenty additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid: Provided, That if said road is not completed within five years from the date of the acceptance of the grant hereinbefore made the lands remaining unpatented shall revert to the United States.

SEC. 4. And be it further enacted, That as soon as said company shall file with the Secretary of the Interior maps of its line, designating the route thereof as aforesaid, it shall be the duty of the said Secretary to withdraw from the market the lands granted by this act in such manner as may be best calculated to effect the purposes of this act and subserve the public interest.

SEC. 5. And be it further enacted, That the United States mail shall be transported on said road, under the direction of the Post-Office Department, at such price as Congress may by law provide: Provided, That until such price is fixed by law the Postmaster General shall have power to fix the compensation.

1052 SEC. 6. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said railroad company, its successors and assigns, for the construction of a railroad as proposed to the extent of one hundred feet in width on each side of said road where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operating of said road.

SEC. 7. And be it further enacted, That said First Division of the St. Paul & Pacific Railroad Company, its successors and assigns, is hereby authorized and empowered to extend its railroad through the Territory of Dakota from the mouth of the Sioux Wood river to the international boundary on the forty-ninth parallel of north latitude in the general direction of Winnipeg district of British America.

Endorsement: 41st Congress, 2d session. S. 381. A bill granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America.

1870, January 12th, read twice, referred to the Committee on Public Lands, and ordered to be printed.

1053 UNITED STATES OF AMERICA, } ss:
City of Washington, D. C., }

I, Anson G. McCook, secretary of the Senate of the United States, do hereby certify that the foregoing paper writing hereto annexed is a true copy of an original bill now on file in my office, which was

introduced in the Senate January 12, 1870, numbered S. 381, and entitled "A bill granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America," with the endorsements thereon, and that I have compared the same with the said original bill on file as aforesaid.

Given under my hand this tenth day of April, A. D. 1884.

ANSON G. McCOOK,
Secretary of the Senate U. S.

Complainant's Exhibit "E" in case St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "F."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding the First Division of the St. Paul & Pacific Railroad Company, the same being a corporation organized under the laws of the State of Minnesota, to construct and operate a railroad from the mouth of the Sioux Wood river, on the western boundary of Minnesota, to the Winnipeg district of British America on
1054 the most eligible railroad route, as shall be determined by said company, there is hereby granted to said First Division of the St. Paul & Pacific Railroad Company every alternate section of land or parts thereof, designated by odd numbers, to the extent of ten sections per mile on each side of the extension of said road hereby authorized, to be selected within twenty miles of the line thereof; but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid from the public lands of the United States nearest to the sections above specified so much land, designated by odd numbers, as shall be equal to the amount of such lands as the United States have sold, reserved, or otherwise appropriated or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands, thus indicated by the direction of the Secretary of the Interior, shall be reserved and held for the use of said company by the said Secretary for the purpose of the construction and operation of the said extension of said railroad, as provided by this act: Provided, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever be, and the same are hereby, reserved and excepted from the operation of this act, except

so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way
1055 two hundred feet in width is hereby granted, subject to the approval of the President of the United States: And provided further, That none of the lands hereby granted shall be selected above twenty-five miles from said road.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by the aforesaid grant shall remain in the United States within ten miles on each side of said road shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price aforesaid: Provided, That actual *bona fide* settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement, and occupation: And provided also, That settlers under the provisions of the homestead act who make their settlement after the passage of this act and comply with the terms and requirements of said homestead act shall be entitled within the said limits of ten miles to patents for amounts not exceeding eighty acres each.

SEC. 3. And be it further enacted, That the grant of lands hereby made is upon condition that said company after the construction of its road shall keep it in repair and use, and that it will at all times be in readiness to transport troops, munitions of war, supplies, and public stores upon its road for the Government when required to do so by any Department thereof at the cost, charge, and expense of said company; and the lands hereby granted, held, and reserved as aforesaid shall inure to the benefit of said company as fol-
1056 lows: That whenever said company shall have twenty or more consecutive miles of any portion of the extension of said railroad line ready for the service contemplated by this act the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty consecutive miles of the extension of said railroad have been completed in all respects as a first-class road, the commissioners shall so report under oath to the President of the United States, and patents of lands as aforesaid shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of railroad; and from time to time, whenever twenty additional miles shall have been constructed, completed, and in readiness as aforesaid and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land aforesaid: Provided, That if said road is not completed within five years from the date of the acceptance of the grant hereinbefore made the lands remaining unpatented shall revert to the United States.

SEC. 4. And be it further enacted, That as soon as said company

shall file with the Secretary of the Interior maps of its line, designating the route thereof as aforesaid, it shall be the duty of the said Secretary to withdraw from the market the lands granted by this act in such manner as may be best calculated to effect the purposes of this act and subserve the public interest.

1057 SEC. 5. And be it further enacted, That the United States mails shall be transported on said railroad, under the direction of the Post Office Department, at such price as Congress may by law provide: Provided, That until such price is fixed by law the Postmaster General shall have power to fix the compensation.

SEC. 6. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said railroad company, its successors and assigns, for the construction of a railroad as proposed, in the extent of one hundred feet in width on each — said road where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, water stations, or any other structures required in the construction and operating of said road.

SEC. 7. And be it further enacted, That said First Division of the St. Paul & Pacific Railroad Company, its successors and assigns, is hereby authorized and empowered to extend its railroad through the Territory of Dakota from the mouth of the Sioux Wood river to the international boundary, on the forty-ninth parallel of north latitude, in the general direction of the Winnipeg district of British America, in the event that the road is located on the west side of said river, and enjoy the benefits of this act.

Passed the Senate May 16, 1870.

Attest: GEO. C. GORHAM, *Secretary.*

1058 Endorsement: S. 381. An act granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America.

UNITED STATES OF AMERICA, } ss:
City of Washington, D. C., }

I, Anson G. McCook, secretary of the Senate of the United States, do hereby certify that the foregoing paper-writing hereto annexed is a true copy of an engrossed bill of the Senate now on file in my office, numbered S. 381, and entitled "A bill granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America," with the endorsement of the Senate thereon, as passed by the Senate May 12, 1870, and which bill was returned from the House of Representatives March 2, 1871, with the following additional endorsement:

"In the House of Representatives.

"MARCH 2, 1871.

"Resolved, That this bill pass, with amendments.

"Attest: ED. McPHERSON, *Clerk.*"

And that I have compared the same with the said original bill and endorsements on file as aforesaid.

1059 Given under my hand this tenth day of April, A. D. 1884.

ANSON G. McCOOK,
Secretary of the Senate U. S.

Complainant's Exhibit "F," case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "G."

Journal of the Senate of the United States.

Forty-first Congress, second session.

JANUARY 12, 1870.

(Page 89.)

* * * * * * *

Mr. Ramsey asked, and by unanimous consent obtained, leave to bring in a bill (S. 381) granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America; which was read the first and second times by unanimous consent, referred to the Committee on Public Lands, and ordered to be printed.

* * * * * * *

1060 FEBRUARY 18, 1870.

(Page 268.)

* * * * * * *

Mr. Pomeroy, from the Committee on Public Lands, to whom was referred the bill (S. 381) granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America, reported it with amendments.

MAY 16, 1870.

(Page 656.)

* * * * * * *

On motion of Mr. Ramsey, the Senate resumed, as in Committee of the Whole, the consideration of the bill (S. 381) granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America; and, the amendments reported by the Committee on Public Lands having been agreed to,

On motion by Mr. Casserly, to further amend the bill by inserting at the end thereof the following as an additional section:

"SEC. —. And be it further enacted, That the lands granted by this act, excepting only such as are necessary for the company to reserve for depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, and timber and mineral land, shall be sold to actual settlers only and in quanti-
1061 ties not more than one hundred and sixty acres to any one person, at such prices as will secure to said company, its successors or assigns as aforesaid, an average price of not more than two dollars and fifty cents per acre for the land actually certified by the Secretary of the Interior to said company for each completed section of ten miles of said railroad or branch thereof; and to insure an enforcement of this section it shall be the duty of the company receiving the certificates from the Secretary of the Interior as aforesaid for the lands granted in aid of the construction of the first section of ten miles of said railroad and branch without delay to fix the price on each one-hundred-and-sixty-acre tract described in said certificates in such manner and at such rates that the average price of the whole amount certified shall not exceed two dollars and fifty cents per acre, and report the same to the Secretary of the Interior, exposing a copy of such report to the public in the office of the secretary of such company and in the district land office; and any person actually settling upon said land or any Government subdivision thereof not greater than a quarter section shall have the right to purchase at the price so fixed any unsold and unclaimed parcel of said land upon payments of said price to the officer appointed to receive the money by said company, and on payment thereof is shall be the duty of the officer of such company to make out triplicate certificates of the sale under the seal of company, send one to the Secretary of the Interior and deliver one to the purchaser and retain the other for the use of the company; and it shall be the duty of the Secretary of the Interior to issue to such purchaser a patent for the land described in his certificate, as in case of land sold by the United States; and the same form of proceeding shall be observed with re-
1062 spect to the lands certified by the Secretary of the Interior on each succeeding completed section of ten miles of the main line of said railroad and the branch thereof: Provided, That no certificate of lands to such company on any completed section after the first shall be made by the Secretary of the Interior until he shall have received a report, as aforesaid, of the price fixed on the land certified for the next preceding completed section of said railroad or branch thereof: And provided further, That if any of the lands granted as aforesaid, and lying and being situated coterminous with any completed section of ten miles of said road or branches, shall remain unsold and not paid for according to the provisions of this act for one year after the completion of said section, the certificates heretofore issued may be returned to the Secretary of the Interior, whereupon patents to said land shall be issued to the company; and the Secretary of the Interior shall prescribe all necessary rules and regulations to carry into effect this act."

After debate,

It was determined in the negative.

Yeas—20.

Nays—27.

On motion of Mr. Casserly,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs.

* * * * * * *

Those who voted in the negative are Messrs.

* * * * * * *

So the amendment was not agreed to.

1063 The bill having been further amended, on the motion of Mr. Harlan it was reported to the Senate and the amendments were concurred in.

Ordered, That the bill be engrossed and read a third time.

The said bill was read a third time, and on the question, Shall the bill pass?

It was determined in the affirmative.

Yeas—33.

Nays—14.

On motion by Mr. Thurman,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are Messrs.

* * * * * * *

Those who voted in the negative are Messrs.

* * * * * * *

So it was

Resolved, That the bill pass, and that the title thereof be as aforesaid.

Ordered, That the secretary request the concurrence of the House of Representatives therein.

UNITED STATES OF AMERICA, } ss:
City of Washington, D. C., }

I, Anson G. Cook, secretary of the Senate of the United States, do hereby certify that the foregoing paper-writing hereto annexed is a true copy and correct extracts from the Journal of the Senate of the United States of all entries therein in the second session of the Forty-first Congress, in relation to a bill introduced in the Senate January 12, 1870, numbered S. 381, and entitled "A bill
1064 granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America," and that I have compared the same with said entries contained in said Journal.

Given under my hand this 10th day of April, 1884.

ANSON G. McCOOK,
Secretary of the Senate U. S.

Complainant's Exhibit "G," case St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "H."

Journal of the House of Representatives of the United States.

Forty-first Congress, second session.

* * * * * * *

MAY 17, 1870.

* * * * * * *

A message from the Senate by Mr. Hamlin, one of their clerks:

Mr. SPEAKER: * * *

The Senate have also passed bills and a joint resolution of the following titles, viz:

* * * * * * *

S. 381, An act granting lands to aid the construction of a
1065 railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America.

* * * * * * *

In all of which I am directed to ask the concurrence of the House.

* * * * * * *

MAY 24, 1870.

* * * * * * *

On motion of Mr. Wilkinson, the bill of the Senate (S. 381) granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux — river with the Red River of the North, to the Winnipeg district of British America was ordered to be printed.

* * * * * * *

Third session.

* * * * * * *

MARCH 1, 1871.

* * * * * * *

Mr. Eugene M. Wilson moved to suspend the rules, so as to take from the Speaker's table the bill of the Senate (S. 381), to enable the House to agree to an amendment proposed to be submitted by him and pass the bill as amended, which motion was agreed to (two-thirds voting in favor thereof).

So the rules were suspended, the amendment agreed to, and the bill passed.

Ordered, That the clerk request the concurrence of the Senate in the said amendment.

* * * * * * *

1066 MARCH 2, 1871.

On motion of Mr. Eugene Wilson, by unanimous consent, the title of the bill of the Senate (S. 381) granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America was amended by striking out all after the word "act" and inserting the following words, viz: "Authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands."

Ordered, That the clerk request the concurrence of the Senate therein.

* * * * * * *

MARCH 3, 1871.

* * * * * * *

A message from the Senate by Mr. Sympson, one of their clerks:

Mr. SPEAKER: * * *

The Senate have also agreed to the amendments of the House to the bill of the Senate (S. 381) granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America.

* * * * * * *

Mr. Beatty, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills and joint resolutions of the following titles, viz:

* * * * * * *

S. 381, An act authorizing the St. Paul & Pacific Railroad
1067 Company to change its line in consideration of a relinquishment of lands.

* * * * * * *

When
The Speaker signed the same.

* * * * * * *

A message from the Senate, by Mr. Sympson one of their clerks:

Mr. SPEAKER: The President of the United States has notified the Senate that he did this day approve and sign bills and joint resolutions of the following titles, viz:

* * * * * * *

S. 381, An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands.

* * * * * * *

UNITED STATES OF AMERICA, } ss:
City of Washington, D. C., }

I, John B. Clark, Jr., clerk of the House of Representatives of the United States, do hereby certify that the foregoing paper-writing hereto annexed is a true copy and correct extracts from the Journal of the House of Representatives of the United States of all entries therein

in relation to a bill from the Senate, numbered S. 381, entitled, when received, "An act granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America" (which title was changed as by amendment, as thereinbefore appears, to "An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands"), and that I have compared the same with said entries contained in said Journals.

1068

In testimony whereof I have hereunto set my hand and caused the seal of the House of Representatives to be affixed this tenth day of April, A. D. 1884.

[Seal of the House of Representatives U. S.]

JNO. B. CLARK, JR.,
Clerk of the House of Representatives U. S.

Complainant's Exhibit "H," case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "I."

41st Congress, 3d session.

Congress of the United States, in the House of Representatives.

Resolved, That the bill from the Senate (No. 381) entitled "An act granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America" do pass, with the following amendments:

Strike out all after the enacting clause and substitute the following:

That the St. Paul & Pacific Railroad Company may so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior, it may locate and construct in lieu thereof a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines, as is provided for the present lines by existing laws:

1069

Provided, however, That this change shall in no manner enlarge said grant, and that this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such

lands so released shall be considered as immediately restored to market without further legislation.

Amend the title so that it will read—

An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands.

Attest: EWD. McPHERSON, *Clerk.*

UNITED STATES OF AMERICA, } ss:
City of Washington, D. C., }

I, John B. Clark, Jr., clerk of the House of Representatives of
1070 the United States, do hereby certify that the foregoing paper-writing hereto annexed is a true copy of the engrossed amendments agreed to by the House of Representatives to the bill of the Senate numbered 381, Forty-first Congress, and entitled "An act granting lands to aid the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America," which bill passed the House of Representatives, as amended, March 1, 1871, and, with the amendments, was returned to the Senate March 2, 1871; and that I have compared the same with the original engrossed copy of the amendments now on file in the office of the secretary of the Senate.

In testimony whereof I have hereunto set my hand and caused the seal of the House of Representatives to be affixed this tenth day of April, 1884.

[Seal of House of Representatives.]

JNO. B. CLARK, JR.,
Clerk of the House of Representatives.

UNITED STATES OF AMERICA, *Washington, D. C.:*

I, Anson G. McCook, secretary of the Senate of the United States, hereby certify that the foregoing paper-writing hereto annexed is a true copy of the engrossed amendments of the House of Representatives to the bill of the Senate numbered S. 381, Forty-first Congress, received from the House of Representatives March 2, 1871, and agreed to by the Senate on the same day, and that I have compared the same with the said original engrossed amendments, which are now on file in my office.

1071 Given under my hand this tenth day of April, A. D. 1884.

ANSON G. McCOOK,
Secretary of the Senate U. S.

Complainant's Exhibit "I," case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "K."

Journal of the Senate of the United States.

Forty-first Congress, third session.

MARCH 2, 1871.

* * * * * * *

A message from the House of Representatives by Mr. McPherson, its clerk:

Mr. PRESIDENT: The House of Representatives has agreed to the report of the committee of conference on the * * * and

It has passed the bill of the Senate (S. 381) granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America, with an amendment, in which it requests the concurrence of the Senate.

HALF PAST SEVEN O'CLOCK P. M.

The Senate proceeded to consider the amendment of the House of Representatives to the bill of the Senate (S. 381) au-
1072 thorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands; and,

On motion by Mr. Ramsey,

Resolved, That the Senate agree to the amendment of the House of Representatives to the said bill.

Ordered, That the secretary notify the House of Representatives thereof.

MARCH 3, 1871.

* * * * * * *

A message from the House of Representatives by Mr. McPherson, its clerk.

Mr. PRESIDENT: * * *

The Speaker of the House of Representatives having signed five enrolled bills (S. 381, S. 574, S. 892, S. 1041, S. 1204), I am directed to bring them to the Senate for the signature of its president.

Mr. Thayer reported from the committee that they had examined and found duly enrolled the following bills:

S. 381, An act authorizing the Saint Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands.

The Vice-President signed the five enrolled bills (S. 381, S. 574, S. 892, S. 1041, and S. 1204) last reported to have been examined, and they were delivered to the committee to be presented to the President of the United States.

* * * * * * * *

SIX O'CLOCK P. M.

Mr. Thayer reported from the committee that they this day pre-

sented to the President of the United States the following enrolled bills:

1073 S. 381, An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands.

* * * * * * *

A message from the President of the United States by Mr. Porter, his secretary.

Mr. PRESIDENT: The President of the United States approved and signed this day the following acts and joint resolutions:

* * * * * * *

S. 381, An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands.

* * * * * * *

Ordered, That the secretary notify the House of Representatives thereof.

* * * * * * *

UNITED STATES OF AMERICA, }
City of Washington, D. C. }

I, Anson G. McCook, secretary of the Senate of the United States, do hereby certify that the foregoing paper-writing hereto annexed is a true copy and correct extracts from the Journal of the Senate of the United States of all entries therein, in the third session of the Forty-first Congress, in relation to a bill introduced in the Senate January 12, 1870, and entitled "A bill granting lands to aid in the construction of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America" (which title was changed by amendment, as thereinbefore appears, to "An act authorizing the St. Paul & Pacific Railroad Company to change
1074 its line in consideration of a relinquishment of lands"), and that I have compared the same with said entries contained in said journal.

Given under my hand this tenth day of April, A. D. 1884.

ANSON G. McCOOK,
Secretary of the Senate U. S.

Complainant's Exhibit "K," case of St. P., M. & M. R'y Co. *v.* N. P. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "L."

At a meeting of the board of directors of the St. Paul & Pacific Railroad Company held at their office, in St. Paul, on the twenty-third day of December, in the year 1869, pursuant to a call by the president, there were present Hon. R. R. Nelson, E. A. C. Hatch, Jas. E. Thompson, Edmund Rice, pres't, being all the directors now in office as such.

On motion of Hon. R. R. Nelson, E. A. C. Hatch was appointed secretary *pro tem.*, the secretary being absent.

The president called the attention of the board to the contract between the Chicago & Northwestern Railway Company, the St. Paul & Pacific Railway Company, and Henry M. Rice, dated November 1, 1867, and also read a letter from M. L. Sykes, Jr., Esq., 2nd vice-pres't of the Chicago & Northwestern R'y Company in reference to directors as follows:

1075 "This company is entitled to four directors, but, as we understand that you have four now at St. Paul for a quorum, we desire now to put in three of ours, and would request, at the instance of Alex. Mitchell, Esq., pres't, that you convene your board directly and elect Alex. Mitchell, John M. Burke, and M. L. Sykes, Jr., as directors of your Co."

The president also stated that there were three vacancies in the board, occasioned by the resignation of H. T. Welles, Dwight Woodbury, and Richard Chute, Esqs., which took effect by their terms, and were accepted November 8, 1867.

On motion of R. R. Nelson, the board then proceeded to ballot for three directors to fill the vacancies existing in the board, and, the ballots being counted, it was found that Alexander Mitchell, of Milwaukee; John M. Burke, and M. L. Sykes, Jr., of New York, had respectively received four votes, and they were each declared duly elected as directors of the St. Paul & Pacific Railroad Company.

On motion of J. E. Thompson, the board then adjourned.

EDMUND RICE, *Pres't.*

E. A. C. HATCH,
Sec. pro tem.

Complainant's Exhibit "L" in case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

1076 COMPLAINANT'S EXHIBIT "M."

St. Paul & Pacific Railroad Company.

FEBRUARY 1ST, 1871.

Meeting of board of directors pursuant to adjournment.

Present: Messrs. E. Rice, J. Gregory Smith, R. D. Rice, E. Putnam, S. Wilkeson.

On motion of Mr. Smith, the vacancy made by the resignation of Judge Nelson was ordered to be filled by ballot.

Four votes were cast for Mr. George W. Cass, and he was declared duly elected.

On motion of Mr. Smith, the vacancy made by the resignation of Mr. E. A. C. Hatch was ordered to be filled by ballot.

Four votes were cast for Mr. R. D. Rice, and he was declared duly elected.

The resignation of Mr. Samuel Wilkeson was accepted.

Wm. B. Ogden received five ballots, and was declared elected.

The resignation of Mr. Eugene Putnam was accepted, and Wm. G. Moorhead was elected in his place, receiving five votes—all.

Mr. Wm. N. Goddard's resignation was accepted and Mr. Chas. B. Wright elected in his place, receiving five votes—all.

The following resolutions were offered by Mr. Smith:

1077 Whereas by the terms of an arrangement entered into between the St. Paul & Pacific Railroad Company and the First Division of the St. Paul & Pacific Railroad Company, having for its object the construction of the proposed line of railway from some point at or near St. Cloud to St. Vincent, in the State of Minnesota, and for the management and operation of said line of road after its completion for a term of years not exceeding ninety-nine; and

Whereas by the terms of such arrangement, in consideration of the construction, equipment, and operation of said proposed line of railway by the First Division of the St. Paul & Pacific Railroad Company, this company is to execute to said last-named company a mortgage or trust deed upon the road between some point at or near St. Cloud to St. Vincent, and all the lands, rolling stock, equipment, and franchises thereunto belonging, to secure the payment of the principal and interest upon bonds issued by the First Division of the St. Paul & Pacific Railroad Company aforesaid, for the purpose of completing and equipping said road, to an amount not exceeding fifteen millions of dollars, which said bonds are to be made payable thirty years after date, with interest at the rate of seven per cent. per annum, payable in New York or London semi-annually, at the option of the holder, at the rate of four shillings sterling to the dollar:

Therefore be it resolved, That the president and secretary of the company be authorized to enter into an agreement with the First Division of the St. Paul & Pacific Railroad Company for the construction, equipment, and operation of said line of railway upon the basis hereinbefore mentioned.

Resolved, That the president and secretary of the company

1078 be authorized and directed to execute a mortgage or trust deed to the First Division of the St. Paul & Pacific Railroad Company to secure its bonds, issued for the purposes hereinbefore recited, for an amount not exceeding fifteen millions of dollars, such mortgage to include road-bed, lands, rolling stock, equipment, and franchises pertaining or in any way belonging to the line of road hereinbefore mentioned.

Resolved, That for the purposes contemplated by the execution of said mortgage or trust deed the following-named gentlemen be constituted the trustees, to wit:

George L. Becker, Horace Thompson, and Wm. G. Moorhead.

On motion, duly seconded, the foregoing resolution was adopted.

On motion, adjourned *sine die*.

SAMUEL WILKESON,
Secretary pro tempore.

COMPLAINANT'S EXHIBIT "N."

(This exhibit consists of certain pages of the stock-certificate book of the St. Paul & Pacific Railroad Company, each of which comprises a "stub" and the certificate cut therefrom and issued and, when surrendered for transfer, pasted upon the stub. The certificates being in the same form, No. 23 alone is printed in full, with its indorsements. As to the others, the date, number of shares, and to whom issued, together with the memoranda on the stubs
1079 and on the face of the certificates and the indorsements on the certificates are here printed.)

The Saint Paul & Pacific Railroad Company.

Full-paid 10,000 shares.

SHARES ONE HUNDRED DOLLARS.

(No. 23.) *Stock Certificate.*

This certifies that Edmund Rice, of ——, is entitled to ten thousand shares, of one hundred dollars each, of the capital stock of the Saint Paul & Pacific Railroad Company, transferable only on the books of the company, in person or by attorney, upon the surrender of the certificate.

No further payments will be required on this stock.

In testimony whereof the said company have caused this certificate to be signed by their president and secretary.

St. Paul, Minnesota, March 14th, 1865.

R. R. NELSON,
Vice-Pres't and Acting President.

HENRY ACKER, *Secretary.*

(Endorsements:)

Blank transfer, signed "Edmund Rice," and the following: "Cancelled and surrendered Nov. 9, '67, and

Certificates to Edmund Rice, in lieu, issued as follows:

No. 33, for 9,366 shares.

Nos. 34, 35, 36, 37, 38, 39, 40, 41, and 42, for one share each.

And No. 43, for 625 shares; this to be used to retire other outstanding certificates that were exchangeable into Litchfield's special stock, and afterwards this certificate, No. 43, was cancelled.

July 22, 1870, certificate No. 51, to Edmund Rice, for 487 shares issued, leaving 138 shares due him when Nos. 1, 2, 14, and 15
1080 shall have been taken up and cancelled, as per agreement with E. B. Litchfield, Feb. 6, 1864, by First Division St. Paul & Pacific.

No. 24. Dated March 14, 1865.

For 10,000 shares. To Edmund Rice.

(Written across face: "Cancelled Oct. 10, '71, and certificate No. 52 issued to A. H. Barney, treas'r N. P. R. R. Co.")

(Endorsement.)

"For value received I hereby transfer to A. H. Barney, treas'r of Northern Pacific R. R. Co., 10,000 shares of stock in the Saint Paul and Pacific Railroad Company, embraced in the within certificate, including all unpaid dividends thereon.

"Dated this 9th day of March, 1870.

"EDMUND RICE."

"A. L. PRITCHARD."

{ U. S. int. rev. stamp cancelled. "E. R., March 9, '70." }

No. 25. Dated March 14, 1865.
For 10,000 shares. To Edmund Rice.
(Written across face: "Cancelled Oct. 10, '71, and certf. No. 52 issued to A. H. Barney, treas'r N. P. R. R.")
(Endorsement: Same as No. 24.)

No. 26. Dated March 14, 1865.
For 10,000 shares. To Edmund Rice.
(Written across face: "Cancelled Oct. 10, '71, and certf. No. 52 issued to A. H. Barney, treas. N. P. R. R.")
(Endorsement: Same as No. 24.)

1081 No. 27. Dated March 14, 1865.
For 10,000 shares. To Edmund Rice.
(Written across face: "Cancelled. See No. 53.")
(Endorsement: Blank transfer, without date, signed by Edmund Rice.)

No. 33. Dated November 9, 1867.
For 9,366 shares. To Edmund Rice.
(Written across face: "Cancelled. See certif. 53.")
(Endorsement: Same as No. 27, and internal rev. stamp, cancelled. "E. R., Nov. 9, '67.")

No. 34. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Endorsement: Same as No. 33, and the following: "Cancelled July 2d, 1870, and certificate No. 50 issued to Wm. N. Goddard. E. Rice, p't.")

No. 35. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Endorsement: Transfer to John M. Burke, signed Edmund Rice," but not dated. Int. rev. stamp, 25 cents, cancelled, "E. R., Nov. 9, '67," and the following: "Cancelled, and No. 46 issued to John M. Burke Dec. 23d, 1869. E. Rice, p't.")

No. 36. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Endorsement: Transfer to Alex. Mitchell, signed "Edmund Rice," and not dated. U. S. int. rev. stamp, 25 cents, can-
1082 celled. E. R., Nov. 9, '67;" also the following: "Cancelled, and No. 44 issued to Alexander Mitchell Dec. 23d, 1869. E. Rice, p't.")

No. 37. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Written across face: "Cancelled. See certf. 53.")
(Endorsement: Blank transfer, signed "Edmund Rice.")

No. 38. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Written across face: "Cancelled. See certf. 53.")
(Endorsement: Transfer to J. E. Thompson.)

No. 39. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Written across face: "Cancelled. See certf. 53.")
(Endorsement: Transfer to E. A. C. Hatch.)

No. 40. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Written across face: "Cancelled. See certif. 53.")
(Endorsement: Transfer to R. R. Nelson.)

No. 41. Dated November 1, 1867.
For 1 share. To Edmund Rice.
(Written across face: "Cancelled. No. 54.")
(Endorsement: Blank transfer, signed "Edmund Rice.")

No. 42. Dated November 9, 1867.
For 1 share. To Edmund Rice.
(Endorsement: Transfer to M. L. Sykes, Jr., signed Ed-
1083 mund Rice, and not dated; also U. S. int. rev. stamp, 25 cents, cancelled. "E. R., Nov. 9, '67;" also the following: "Cancelled, and No. 45 issued to M. L. Sykes, Jr., December 23, 1869. E. Rice, p't.")

No. 44. Dated December 23, 1869.
For 1 share. To Alexander Mitchell.
(Endorsement: Transfer to the St. Paul & Pacific Railroad Company, dated July 22, 1870, signed by "Alex. Mitchell," and the following: "Cancelled July 22, 1870, and certificate No. 49 issued to Eugene Putnam. E. Rice, p't.")

No. 45. Dated December 23, 1869.
For 1 share. To M. L. Sykes, Jr.
(Endorsement: Transfer to St. Paul & Pacific R. R. Co., dated July 22, 1870, as in No. 44, and the following: "Cancelled July 22, 1870, and certificate No. 48 issued to Samuel Wilkeson. E. Rice, p't.")

No. 46. Dated December 23, 1869.
For 1 share. To John M. Burke.
(Endorsement: Transfer to St. Paul & Pacific R. R. Co., dated April 1, 1870, signed John M. Burke, with U. S. int. rev. stamp, cancelled. "J. M. B., April 1, '70;" also the following: "Cancelled July 22, 1870, and certificate 47 issued to J. Gregory Smith. E. Rice, p't.")

No. 47. Dated July 22, 1870.

For 1 share. To J. Gregory Smith.
(Endorsement: Transfer to Johnston Livingston, dated December 29, 1875.)

No. 48. Dated July 22, 1870.
For 1 share. To Samuel Wilkeson.
1084 (Written on face: "Cancelled. No. 55.")
(Endorsement: Blank transfer, signed "Samuel Wilkeson," and not dated.)

No. 49. Dated July 22, 1870.
For 1 share. To Eugene Putnam.
(Written on face: "Cancelled. No. 56.")

No. 50. Dated July 22, 1870.
For 1 share. To William N. Goddard.
(Written on face: "Cancelled. No. 57.")
(Endorsement: Blank transfer, signed "W. N. Goddard," and not dated.)

No. 51. Dated July 22, 1870.
For 487 shares. To Edmund Rice.
(Endorsement: Blank transfer, signed "Edmund Rice," and not dated, with U. S. int. rev. stamp, 25 cents, cancelled. "E. R., Oct. 22, '70.")

No. 52. Dated October 10, 1871.
For 30,000 shares.
To "A. H. Barney, treasurer of the Northern Pacific R. R. Company."
(Written on face: "Cancelled Sep. 29, 1872.")
(Memorandum on stub: "In place of certificates Nos. 24, 25, and 26, transferred by Edmund Rice;" also, "Received the annexed certificate. A. H. Barney, tr.")
(Endorsement: Transfer to "Charles B. Wright in trust," dated October 10, 1871, and signed "A. H. Barney, treasurer North.
1085 Pacific railroad;" also the following: "New certificate issued to Charles B. Wright in trust, dated Sep. 29, 1873:

No. 61, for 10,000 shares.
62, for 10,000 "
63, for 10,000 "

30,000 shares.")

No. 53. Dated December 13, 1871.
For 19,857 shares. To "A. H. Barney, treas'r Northern Pacific Railroad Company."
(Memorandum on stub: "In place of certificates 37, 38, 39, 40, 27 and 51 and 33, transferred by Edmund Rice, Esq.;" also, "Received the annexed certificate. A. H. Barney, tr., by W. N. Goddard, cashier.")
(Endorsement: Blank transfer, signed "A. H. Barney, treas.," and not dated.)

No. 54. Dated March 22, 1871.
For 1 share. To R. D. Rice.
(Memorandum on stub: "In place of certif. 41;" also, "Received the annexed certificate. W. N. Goddard, cash'r.")
(Endorsement: Transfer to Frederick Billings, dated December 29, 1875.)

No. 55. Dated March 22, 1871.
For 1 share. To Wm. B. Ogden.
(Memorandum on stub: "In place of certf. 48;" also, "Received the annexed certificate. W. N. Goddard, cash'r.")
(Endorsement: Transfer to George Gray, dated December 29, 1875.)

1086 No. 56. Dated March 22, 1871.
For 1 share. To Wm. G. Moorhead.
(Memorandum on stub: "In place of certf. 49;" also, "Received the annexed certificate. Wm. N. Goddard, cash'r.")
(Endorsement: Transfer to Alex. Ramsey, dated December 29, 1875.)

No. 57. Dated March 22, 1871.
For 1 share. To Chas. B. Wright.
(Memorandum on stub: "In place of certif. No. 50;" also, "Received the annexed certificate. W. N. Goddard, cash'r.")
(Endorsement: Transfer to George Stephen, trustee, dated Oct. 30, 1879.)

No. 58. Dated March 22, 1871.
For 1 share. To Geo. W. Cass.
(Memorandum on stub: "Received the annexed certificate. W. N. Goddard, cash'r.")
(Endorsement as in No. 57.)

No. 59. Dated December 13, 1871.
For 19,856 shares.
To "A. H. Barney, Esq., treasurer Northern Pacific Railroad Company."
(Memorandum on stub: "Received the annexed certificate. W. N. Goddard, cash'r.")
(Endorsement: Transfer to "Charles B. Wright in trust," dated December 13, 1871, and signed "A. H. Barney, treasurer of the
1087 North. Pacific Railroad Co.;" also, "New certificates issued to Charles B. Wright in trust, dated Sep. 29, 1873, as follows:

No. 64, for 10,000 shares.
65, for 9,856

19,856 shares.")

COMPLAINANT'S EXHIBIT "O 2."

I, Samuel Wilkeson, secretary of the Northern Pacific Railroad Company, certify that at a meeting of the board of directors of said

company held on the 15th day of February, 1871, the following preamble and resolutions were unanimously adopted:

"Whereas the Northern Pacific railroad is the owner of a majority of the stock of the First Division of the St. Paul & Pacific Railroad Company, and practically the owner of the property; and whereas it becomes necessary in carrying out our arrangements with the agents for the sale of bonds of the 1st Division of the St. Paul & Pacific Railroad Company in Europe that a contract should be made with some individual for the construction of the road of the St. Paul and Pacific railroad from Sauk Rapids to St. Vincent; Therefore

"Resolved, That this board recommends and assents to the First Division of the St. Paul & Pacific Railroad Company contracting with Wm. G. Moorhead for the construction of said road, and that the president be directed to take a declaration of trust from
1088 said Moorhead, and by proper instrument to indemnify said Moorhead from all risk and damage by reason of entering into said contract."

And I further certify that the said board of directors, at a meeting held on the tenth day of May, 1871, unanimously adopted a preamble and resolutions of which the following is a copy:

"Whereas this corporation is practically the owner of the St. Paul & Pacific and the St. Paul & Pacific First Division railroads and their properties and estates, through an ownership of the share capital of those companies, and with a view to protect and promote this interest: Therefore

"Resolved, That there be appointed a committee of three, who shall take entire charge of the construction of said roads and bring them into working use at the earliest day practicable consistent with reasonable economy.

"Resolved, That said committee be also empowered to carry forward and perfect the negotiations for the delivery and sale of the bonds of the St. Paul & Pacific Railroad Company, and to apply the proceeds of said sale to the construction of the roads according to existing agreements, and shall report their proceedings monthly to this board.

"Resolved, That as Wm. G. Moorhead holds in trust for this company the contract for constructing the St. Paul & Pacific 1st Division, he shall be the chairman of said committee, and that he is authorized to employ a competent clerk to the committee."

And I further certify that at a meeting of said board of directors held on the twelfth of May, 1871, the president of the com-
1089 pany announced as the committee to take charge of the construction of the St. Paul & Pacific railroads the following members of the board:

Mr. Moorhead, chairman.
The president.
" vice-president.
Mr. Cass.
Mr. Felton.

[Seal of Northern Pacific R. R. Co.]

SAM'L WILKESON,
Secretary of the N. P. R. R. Co.

Complainant's Exhibit "O 2" in case of St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "P."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 16, 1884.

I, H. M. Teller, Secretary of the Interior, hereby certify that the papers hereto attached are true copies of the originals now on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed the day and year first above written.

[Seal of Interior Department.]

H. M. TELLER, *Secretary.*

1090 STATE OF MINNESOTA,
EXECUTIVE DEPARTMENT, ST. PAUL, *Nov.* 1, 1869.

Hon. J. D. Cox, Secretary of the Interior, Washington, D. C.

SIR: I have the honor to transmit by to-day's mail a certified copy of a map filed in this office Oct. 20, 1869, showing the location of the branch line of the St. Paul & Pacific R. R. from Crow Wing to a point near the center (measuring north and south) of the tier of townships numbered one hundred and forty-two.

Very respectfully your ob't servant,

WM. R. MARSHALL, *Governor.*

Milwaukee and St. Paul railway. Superintendent's office, Iowa and Minnesota and Iowa and Dakota Divisions.

MINNEAPOLIS, MINN., *Feb'y* 5, 1870.

Hon. D. S. Norton.

DEAR SIR: By request of Mr. Edmund Rice I send you affidavits to be used in securing the acceptance of a map of location of St. P. & P. R. R. by the Dep't of the Interior.

Yours very truly,

D. C. SHEPARD.

1091 STATE OF MINNESOTA, } ss:
County of Hennepin, }

David C. Shepard, of Minneapolis, in the State of Minnesota, being duly sworn, deposes and says that he is chief engineer of the St. Paul & Pacific Railroad Company; that he has read the annexed and foregoing affidavit of Francis W. Kimball and knows the contents thereof, and that, to the best of his information, knowledge, and belief, the facts therein stated are true; and he further deposes and says that the affidavit of said Kimball is fully sustained and corroborated by lumbermen and woodmen familiar with the country mentioned in said affidavit, with whom he, the said Shepard, has

had frequent interviews and conversations as to the character and topography of said country.

DAVID C. SHEPARD.

Subscribed and sworn to before me this fifth day of February, A. D. 1870.

GEO. BRADLEY,
[NOTARIAL SEAL.] *Notary Public, Minnesota.*

STATE OF IOWA, }
County of Cerro Gordo, } ss:

Francis W. Kimball, of Waltham, Minnesota, being duly sworn, deposes and says that he is a civil engineer by profession and occupation; that in July, 1869, he was appointed and directed by David C. Shepard, Esq., chief engineer of the St. Paul & Pacific Railroad Company, to survey and locate a line or route for the railroad of said company from Crow Wing to the center tier of townships numbered one hundred and forty-two, and that in pursuance
1092 thereof he did make such survey and location as indicated by a map prepared to be filed with the Governor of the State of Minnesota; that the country lying to the northeast of Otto Tail Lake and on the route of a direct line from Crow Wing to St. Vincent, embraced within townships 135 to 139 and ranges 33 to 38, is of a very marshy character, interspersed by myriads of small lakes and ridges, and the construction of a railroad line over it would be unnecessarily expensive, so much so as to render it, in my opinion, impracticable as compared with the route located upon. The country is unfit for habitation, and I estimate that two-thirds of its area is composed of tamarack swamps, morasses, and grass lakes or ponds, rendering a railroad line very circuitous to avoid them.

F. W. KIMBALL.

Subscribed and sworn to before me this twenty-third day of December, 1869.

M. P. ROSECRANS,
[NOTARIAL SEAL.] *Notary Public.*

EBBITT HOUSE, WASHINGTON, *June* 9, 1870.

SIR: Referring to your letter of the sixteenth of February last to Hon. D. S. Norton, U. S. Senator, and my reply thereto of the nineteenth of that month, addressed to him, and which was filed in your Department, and both which relate to the location of the St. Paul & Pacific railroad from Crow Wing to the center of township 143, in the State of Minnesota, I have the honor to say that since that time examinations have been made by competent engineers of the country between Crow Wing and the tenth standard parallel,
1093 in the general direction of St. Vincent, and my information is that it proves to be utterly impracticable for the construction of a railroad; but, inasmuch as the reports, maps, and affidavits of the engineers have not as yet been completed, I have respectfully to

request that you will give to said company an extension of time within which—at least 90 days from this date—reports, maps, and affidavits will be received by you in support of the confirmation of the location already presented, and to make further examinations with a view to a direct line, if they shall deem it proper.

I have the honor to be, sir, with high respect, your ob't servant,

EDMUND RICE,
President St. Paul & Pacific R. R. Co.

Hon. J. D. Cox, Secretary of the Interior.

STATE OF MINNESOTA, EXECUTIVE DEPARTMENT,
ST. PAUL, *Nov.* 9, 1870.

Hon. Columbus Delano, Secretary of the Interior, Washington, D. C.

DEAR SIR: I am informed that the owners of the charter of the Second Division of the St. Paul & Pacific railroad, commencing at Watab and running northward, via Crow Wing, to St. Vincent, in this State, made an application to Gen'l Cox, your predecessor, to be allowed to materially clange the line of said road as located and established many years ago, and that he took the responsibility to authorize the desired departure from the established line, notwithstanding the fact that those interested in it had but just applied to Congress for such authority and been refused.

1094 There are many settlers along the line of said road, as now located, who made their settlements there in view of the location of the road, paid double price for their lands, and who have toiled and waited for years, and who would now be irreparably injured by the contemplated change should it be consummated.

The land-grant railroad companies of this State have been very liberally dealt with, and it seems to many of our citizens that, while they retain all the lands and advantages derived from these grants and acts of Congress, they should be held to the restriction and guaranties provided for the safety, advantage, or security of the people from whom they derived their bounties and privileges, and not be permitted to sacrifice towns and settlers alike, which have been built or who have located, along the tract of the country which they were intended to benefit, as well as whose lands they insist upon retaining, though all the advantages which they were to confer in exchange be diverted or wholly withheld.

Very respectfully your ob't servant,

HORACE AUSTIN,
Governor of Minn.

Complainant's Exhibit "P," St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.
O. B. HILLIS, *Ex'r.*

1095 COMPLAINANT'S EXHIBIT "Q."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 16, 1884.

I, H. M. Teller, Secretary of the Interior, hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed the day and year first above written.

[Department Seal.]

H. M. TELLER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Nov.* 5, 1869.

SIR: I have received your letter of the first inst. and a map showing a part of the branch line of the St. Paul & Pacific railroad.

As the seal of the State is not affixed, and the secretary of state has omitted to sign the certificate, the map is herewith returned that these omissions may be supplied.

I am, sir, very respectfully your ob't servant,

J. D. COX, *Secretary.*

His excellency Wm. R. Marshall, Governor of Minnesota, St. Paul, Minnesota.

1096 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *December* 9, 1869.

SIR: I have received your letter of the first ultimo, and on the thirteenth of that month a map purporting to show the branch line or route of the St. Paul and Pacific railroad from Crow Wing to the centre of the tier of townships numbered one hundred and forty-two.

The route of this road, as prescribed in the act of Congress, is from St. Anthony, "via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory may determine," which latter point was fixed by the Legislature at St. Vincent. The route delineated on the map, commencing at Crow Wing, runs nearly due west for over sixty miles, and then runs in a nearly direct course towards St. Vincent.

Before accepting this map it is necessary that satisfactory evidence should be filed to show that a direct route between Crow Wing and St. Vincent is impracticable, and that the route as far as selected is the most direct and practicable one on which a railroad can be constructed between those points.

The proof required is an affidavit of the engineer who made the explorations and directed the survey, with a sworn copy of exploration, with such other evidence as to the topographical nature of the country as may be accessible and applicable to the subject.

I am, sir, very respectfully your ob't servant,

J. D. COX, *Secretary.*

His excellency Wm. R. Marshall, Governor of Minnesota, St. Paul, Minnesota.

1097 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Feb.* 16, 1870.

SIR: Under date of the eleventh inst. I received from you a letter addressed to you by D. C. Shepard, stating he sent affidavits to be used in securing the acceptance of a map of the Saint Paul & Pacific railroad.

On the ninth of December last the Governor of the State of Minnesota was informed that a map received from him of a portion of the line of said road, not being on the direct route from Crow Wing to St. Vincent, could not be accepted without it was shown by satisfactory evidence that the direct route was impracticable; that the evidence required was an affidavit of the engineer who made the survey, with a sworn copy of the exploration and such other evidence as might be applicable to the subject.

Two affidavits accompany Mr. Shepard's letter, signed respectively by Francis W. Kimball and himself. It appears from these affidavits that no exploration or survey was made on the direct route; that the character of the country was deemed to be impracticable when compared with that selected for the route of the road. This evidence does not meet the requirements of my letter, and cannot be received as establishing the impracticability of the direct route.

I would also call attention to another matter bearing upon this subject. The resolution of Congress approved July 12, 1862 (12 Stat., 624), provided that this branch line should stop at the intersection of the tenth standard parallel with the fourth guide meridian, a point some fifty miles west of north from Crow Wing, in the direction of St. Vincent. The act of March 3, 1865 (13 Stat., 528),
increased the original grant for this and other roads in Min-
1098 nesota, and provided in section nine that it should be construed so as to apply and extend to that portion of the line vacated under said resolution.

I am now inclined to think that the grant for this road north of the point at which the original grant was vacated must be held as conferred by the act of 1865. In that case it would follow that the intersection of the tenth standard parallel with the fourth guide meridian is a point at which the road in going to St. Vincent would be obliged to touch.

Very respectfully your ob't servant,

J. D. COX, *Secretary.*

Hon. D. S. Norton, U. S. Senate.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *June* 9, 1870.

SIR: I have received your letter of this date asking for time—"at least 90 days"—in which to present "reports, maps, and affidavits" in support of the map filed in this Department as the location of your road from Crow Wing to the center of town 143, in Minnesota.

You will be allowed the extension of time asked for in your letter for the purpose therein indicated.

Very respectfully your ob't servant,

J. D. COX, *Secretary.*

Edmund Rice, Esq., pres't St. Paul & Pac. R. R. Co., Ebbitt House, Washington, D. C.

1099 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *November* 14, 1870.

SIR: I have received your letter of the ninth inst. stating you have been informed that the owners of the charter of the St. Paul & Pacific railroad, commencing at Watab and running northward, via Crow Wing, to St. Vincent, in your State, made an application to my predecessor to materially change the line of said road from the established line; that he had authorized such change, which you think ought not to have been allowed.

In reply, I have the honor to state that you have been misinformed as to the action of the late Secretary on this subject.

On the fifth of November, 1869, there was received at this Department a map of the location of this road from Crow Wing to the center of the tier of townships No. 142. It was certified to by Governor Marshall, under date of Oct. 27, 1869, as showing the line of road as definitely fixed in compliance with the acts of Congress and the act of the Legislative Assembly of Minnesota. The late Secretary declined to accept the map, the location deflecting some sixty miles from a direct course towards St. Vincent; and he further expressed an opinion that, under the act of 1865, the road would have to touch at the intersection of the tenth standard parallel with the fourth guide meridian. The company, however, claimed that on this route it was impracticable to build a railroad, and asked for time in which to file maps, reports, and affidavits to show its impracticability, which was allowed. The time within which they were to be filed expires on the twentieth inst. It is understood from your letter that your objection to a change in the location
1100 only applies to that portion of the road between Watab and Crow Wing. When the case is taken up for action your objections to such change, if it is desired by the company, will be duly considered.

I am, sir, very respectfully your obedient servant,

C. DELANO, *Secretary.*

His excellency Horace Austin, Governor of Minnesota, St. Paul, Minnesota.

Complainant's Exhibit "Q," case St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "R."

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 27, 1884.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of communications on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[Department Seal.]

H. M. TELLÆR,
Secretary of the Interior.

1101 Nov. 8, 1870.

(By telegraph from St. Paul.)

To Hon. J. D. Cox, Sec'y Interior:

I ask further extension of time to twentieth inst. to file maps, etc., in location of line St. Paul and Pacific railroad, now being prepared as fast as possible.

EDMUND RICE.

SEPT. 9, 1870.

(By telegraph from St. Paul.)

To Hon. J. D. Cox:

We have had five parties of engineers at work all summer trying to establish a practicable line for the St. Paul & Pacific R. R. They are still in the field. The country develops new difficulties.

I ask a suspension of your decision on location above Crow Wing until they can report.

EDMUND RICE, *Pres't.*

Office St. Paul & Pacific Railroad Company.

ST. PAUL, *Nov.* 16, 1870.

SIR: I had the honor to receive your telegraphic dispath of the 9th granting my request of the 8th.

I am reluctantly compelled once more to appeal to your indulgence by requesting a further extension of time until the first of December.

I do not suppose that the extension will work any injury to the Government or any serious inconvenience to your Depart-
1102 ment; but, as a request was made by the president of the First Division of the St. Paul & Pacific R. R. Co. to be heard in opposition to the location when the application should be made for its confirmation, some regard would necessarily be had, perhaps, to his convenience.

Owing to the length of the line—some 350 miles—and the difficult character of a portion of the country required to be examined and recent unfavorable weather, it has been impossible for the engineers—the five parties have been in the field since May—to complete the work before this time. The last parties are just in, and the map, etc., and report will, I am assured, be in readiness for filing within ten days. If you will reply by telegraph you will confer a favor.

I am, with great respect, your ob't servant,

EDMUND RICE, *Pres't, etc.*

The Hon. Columbus Delano, Sec'y of the Interior, Washington, D. C.

Complainant's Exhibit "R," case St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "S."

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 27, 1884.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of telegrams of record in this Department.

1103 In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[Department Seal.]

H. M. TELLER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *November* 9, 1870.

(Telegram.)

Edmund Rice, St. Paul, Minnesota:

The time for filing, etc., as requested, is extended to the twentieth inst.

C. DELANO, *Secretary.*

Answer to No. 13. Collect on delivery.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *September* 12, 1870.

(Telegram.)

Edmund Rice, St. Paul, Minn.:

Your telegram of the 9th ult. received. The time within which "reports, maps, and affidavits" may be filed is extended sixty days.

J. D. COX, *Secretary.*

Answer to dispatch of Friday. Collect on delivery.

1104 COMPLAINANT'S EXHIBIT "T."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June* 14, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copies, pages one (1) to twelve (12), both inclusive, are true and literal exemplifications from the records and files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Commissioner's Seal.]

N. C. McFARLAND,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *July* 10, 1865.

Reg. & rec., Taylor's Falls, Minnesota.

GENTLEMEN: The Governor of Minnesota, under date of the seventh ulto., requested a withdrawal of lands granted to that State by the act approved March 3, 1865, to aid in the construction of certain railroads (Pamph. Laws, page 626), and filed a map showing how far the roads had been constructed under the grant of March 3, 1857.

I therefore enclose a diagram showing the line of route, with the ten and twenty mile limits, of the branch line of the St. Paul & Pacific railroad lying in your district, and you are hereby directed to withdraw from pre-emption and homestead private entry and location all the odd-numbered sections within those districts as shown by said diagram.

1105 The register will proceed at once to lay down in pencil on the township plats both the ten and twenty mile limits, and make the proper notes thereon, showing the odd sections to be reserved from sale or location.

By the fourth section of the act March 3, 1865, the sections and parts of sections (even numbers) within the ten miles on each side remaining to the U. S. are increased to $2.50 per acre, and "actual *bona fide* settlers under the pre-emption laws" may, after proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the increased minimum price, and settlers under the homestead law who comply with its provisions are entitled to enter 80 acres.

Under this provision of the law pre-emptors who may have settled on such even sections are required to pay for the land at the rate of $2.50 per acre without regard to date of settlement.

Your attention is called to the proviso in the 6th section of said act, which provides "that nothing herein contained shall interfere with any existing rights acquired under any law of Congress heretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads."

This provision excepts from the operation of the act any rights acquired under the grant of 3rd March, 1857, and 7th section, act 12th May, 1864.

This order will take effect from the date of its reception at your office, and you will advise this office of the precise time it may be received by you.

In regard to the proceedings to be taken by you when selec-
1106 tions of granted lands are filed in your office you are referred to the instructions contained in the circulars dated November 14 and December 29, 1864.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

NOTE.—Copies of this letter sent to reg's & rec's at Winnebago, Minneapolis, Minn., and St. Cloud, Minn. Except in letter to R. & R. at Minneapolis, read "main line St. Paul & Pacific railroad," lines numbered 8 and 9 in this letter. In letter to R. & R., St. Cloud, read lines numbered 8 and 9, "main & branch lines of the St. Paul & Pacific railroad." In letter to R. & R., Winnebago City, read lines 8 and 9, "branch line of the Winona & St. Peter railroad."

(Letter of same tenor and date to register & receiver *of* St. Peter, Minn., reading, however, "Winona & St. Peter railroad" in place of "branch line of St. Paul & Pacific railroad.")

LAND OFFICE, ST. CLOUD, MINN., *July* 21, 1865.

Hon. J. M. Edmunds, Commissioner.

SIR: We have the honor of acknowledging the receipt of your letter of the tenth inst., accompanying map of St. Paul & Pacific railroad and branch line, with lands reserved for railroad purposes indicated thereon, instructions, and so forth.

This letter was received by us on the evening of the nineteenth inst.

We beg leave for information upon the following points:

First. Where claimants under the pre-emption law have sub-
1107 stantial improvements upon the odd-numbered sections made prior to the date of the withdrawal of these lands, but who have not filed in this office their declaratory statements for the same, can they not be permitted to do so basing their rights upon such prior settlement?

Second. Where parties have made homestead entries upon these lands not withdrawn, but have abandoned the same, do they pass into the hands of the railroad corporation by reason of such abandonment, or can parties desirous of making homesteads upon the same lands give the necessary notice, introduce proof of the abandonment, and, when declared abandoned by your office, be permitted to enter the same as homesteads?

From the peculiar character given to lands once appropriated for homestead purposes, in resubjecting them to the conditions of unoffered lands, doubts have arisen in our minds as to whether they

passed into the hands of the railroad companies the same as ordinary unappropriated lands. We have several instances now on hand where parties have gone to considerable expense in making preparations to prove abandonment of homestead upon odd sections with a view to making homesteads of them themselves.

We are, very respectfully, your ob't serv'ts,

H. C. WAIT, *Register.*

W. B. MITCHELL, *Receiver.*

1108 DEPARTMENT OF THE INTERIOR,
GEN'L LAND OFFICE, *August* 3, 1865.

Register and receiver, St. Cloud, Minn.

GENTLEMEN: In reply to your letter of the twenty-first ultimo, acknowledging receipt of the order of July 10, 1865, withdrawing lands for the St. Paul & Pacific main line & branch railroads and inquiring as to pre-emption rights, etc., I have to state—

First. That the odd sections within ten miles of the roads are not subject to settlement or entry, being granted to the State of Minnesota for said roads.

Second. That the even-numbered sections within ten miles of the roads are subject to settlement and entry under the pre-emption laws at $2.50 per acre and are to be dealt with at that ratability under the homestead law.

Third. That the odd sections between the ten and twenty mile limits were absolutely withdrawn from sale, pre-emption, or homestead entry on the nineteenth of July last (the date of the receipt at your office of the order of withdrawal), except so far as inceptive rights may have accrued prior to that date.

Fourth. The abandonment of lands entered under the homestead which prove to be odd sections or parts of sections falling within twenty miles of the line of roads on each side places such
1109 sections or parts thereof within the grant for railroad purposes, and they are thereafter reserved and are not subject to settlement or entry.

Very respectfully, your ob't s'v't,

J. M. EDMUNDS,
Commissioner.

Complainant's Exhibit "T," case St. Paul, M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLS, *Ex'r.*

COMPLAINANT'S EXHIBIT "U."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June* 30, 1883.

I, L. Harrison, acting Commissioner of the General Land Office, do hereby certify that the annexed copies, pages 1 to twenty-five (25), both inclusive, are true and literal exemplifications from the files and records of this office of letters and papers relating to the

definite location and construction of the Saint Vincent Extension of the St. Paul and Pacific railroad in Minnesota.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Commissioner's Seal.]

L. HARRISON,
Acting Commissioner of Gen'l Land Office.

1110 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 20*th Dec.*, 1871.

SIR: I transmit herewith, for appropriate action, a map designating the route and location of the St. Paul & Pacific railroad from a point at or near St. Cloud to St. Vincent, Minnesota, pursuant to the acts of 3d March, 1857, 3d March, 1865, and 3d March, 1871. The last of these acts authorizes the company to change its line in consideration of a relinquishment of lands. Said relinquishment was filed in this Department yesterday by Hon. B. F. Wade, agent and attorney for the company, and the map should be considered as filed at that date. On first examination of said map I entertained doubts as to the conformity of the route therein shown with the requirements of said act of 1871 on account of its not intersecting the line of the original grant at or near Otter Tail or Rush Lake, the nearest point of the route, as amended, being some miles distant from either of said lakes; but further reflection has convinced me that the new route is a substantial compliance with the terms of the act.

Sufficient evidence has been filed in the Department to show that the change of line is in accord with the legislation of the State of Minnesota as required by said act of 1871.

I am, sir, very respectfully, your ob't servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 18*th June*, 1872.

SIR: On the twentieth December last I transmitted to your
1111 office, for appropriate action, a map designating the route and location of the St. Paul & Pacific railroad from a point at or near St. Cloud, Minnesota, to St. Vincent, in said State. I stated in my letter of transmission that sufficient evidence had been filed in the Department to show that the change of line indicated by said map was in accord with the legislation of the State of Minnesota as required by the act of 3d March, 1871 (16 Stat., 588).

This evidence was partly in print and partly by oral assurance of an officer of the railroad company.

On the twentieth of February last a letter was addressed to the Department by Lafayette Emmett, president of the Minneapolis & St. Cloud Railroad Company, alleging that said act of 3d March

1871, was not only not in accord with the legislation of the State of Minnesota, but directly opposed to it. On the receipt of Mr. Emmett's letter its contents were made known, on the 29th February last, to the attorney of the St. Paul & Pacific Company, in this city, with a request that he at once inform the officers of said company of these allegations, and that unless a satisfactory explanation of them were given to the Department the order withdrawing lands for said road would be revoked.

No explanation of any kind has to this date been made by the company, and any order that may have been issued by your office withdrawing lands in accordance with my letter 20th December last is hereby revoked.

I am, sir, very respectfully, your ob't servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen. Land Office.

1112

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *3d Sept.*, 1872.

SIR: Referring to the departmental letter to your office of the 18th June last, in which my order withdrawing lands for the St. Paul & Pacific railroad was revoked, I have now to direct you to rescind said order of revocation and restore the withdrawal, with the distinct understanding, however, that this is not to be regarded as a decision on the merits of the case, all questions as to the right of the road to the land being reserved for further consideration.

Very respectfully, your ob't servant,

W. H. SMITH,
Acting Secretary.

Hon. Willis Drummond, Comm'r Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *4th Dec.*, 1873.

SIR: I transmit herewith three maps of portions of the St. Vincent Branch of the St. Paul & Pacific railroad, showing the road as completed from a point in section 35, T. 138, R. 46, being 12 miles south of the crossing of the N. P. R. R., to a point 50 miles north thereof, in section 32, T. 146, R. 46; from East St. Cloud, in Sherburne Co., at a point where said road joins the branch line of the First Division of the St. Paul & Pacific R. R., to Melrose, in Stearns Co., 35 miles, and from a point in section 32, T. 146, R. 46, to a point 55 miles north thereof, in section 7, township 154, range 47.

Very respectfully, etc., C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r G. L. O.

1113 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 27, 1880.

Hon. C. Schurz, Secretary of the Interior.

SIR: There are pending in this office lists of selections covering a large quantity of land in Minnesota claimed as inuring to the State for the benefit of the St. Paul, Minneapolis & Manitoba Railway Company, successor to the St. Paul & Pacific—St. Vincent Extension—Railroad Company.

By act of Congress approved March 3, 1857 (11 Stats., 195), there was granted to Minnesota, "for the purpose of aiding in the construction of railroads from Stillwater by way of St. Paul and Saint Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing to the navigable waters of the Red River of the North," etc., the odd-numbered sections of land within six miles of the lines of the roads not otherwise disposed —, providing for "indemnity" for lands lost within the "granted" limits, the indemnity to be taken within limits of fifteen miles of the said lines.

The act prescribed the time and manner in which the land should be certified to and disposed of by the Territory or future State, and it was provided that if the roads and branches were not completed in ten years the lands unsold should revert to the United States.

The joint resolution of July 12, 1862 (12 Stat. 624), after reciting that the act of 1857 granted lands to aid in the construction of a branch, via St. Cloud and Crow Wing, to the Red River of the North, the northern terminus of which was fixed by the Legislature of the Territory at St. Vincent, and expressing the belief that the public interests required a change of location of a part of said branch
1114 road, provided "that in lieu of that part of the railroad grant to Minnesota Territory, by act of Congress approved third March, eighteen hundred and fifty-seven, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line between the Falls of Saint Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior;" and also provided for indemnity within fifteen-mile limits.

The act of March 3, 1865 (13 Stat., 526), increased the grant to ten sections per mile for each of the roads and branches, to be taken within twenty-mile limits; provided for the time and manner in which the lands should be selected, certified, and disposed of; extended the time in which the road and branches might be completed eight years from the date of the act, the lands then remaining unsold, in case of non-completion of the roads, to revert to the United States.

The act of July 13, 1866 (14 Stat., 97), further provided how lands granted to Minnesota might be certified and disposed of.

The act of March 3, 1871 (16 Stat., 588), authorized the St. Paul & Pacific Railroad Company to so alter its branch lines as to construct one branch "from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent," and provided for the same proportional grant of lands.

1115 The act of March 3, 1873 (17 Stat., 631), extended the time for the completion "of the railroad from St. Cloud to St. Vincent, * * * as now located," nine months from the time as before provided by law.

The act of June 22, 1874 (18 Stat., 203), again extended the time for the completion of the road "until the third day of March, A. D. eighteen hundred and seventy-six, and no longer," upon conditions saving the rights of *bona fide* settlers.

December 20, 1871, the Secretary of the Interior transmitted to this office for appropriate action a map showing the definite location of the branch line from a point at or near St. Cloud to a point at or near St. Vincent, giving dates of field-work, sworn and subscribed by the chief engineer and certified by the Governor of Minnesota Nov. 7, 1871, adopted by resolution of the directors March 22, 1871. The Secretary stated that due relinquishment of lands had been made as required by the act of March 3, 1871, authorizing the change of route, and evidence filed that such change was in accord with State legislation. Lands were duly withdrawn for the benefit of the grant on the line thus definitely located, and they so remain.

December 4, 1873, the Secretary of the Interior transmitted to this office three maps showing portions of the line as constructed, viz:

1. From a point in sec. 35, T. 138 N., R. 46 W., twelve miles south of the Northern Pacific railroad to a point 50 miles north thereof in sec. 32, 146 N., 46 W.

2. From East St. Cloud to Melrose, 35 miles.

7. From a point in 32, 146 N., 46 W., to a point 55 miles north thereof in sec. 7, 154 N., 47 W.

1116 Said maps were sworn and subscribed by the chief engineer Nov. 18, 1873, and certified by the Governor Nov. 22, 1873. They were recognized by the Department and by this office, and lands coterminous with the line so constructed have been patented to the State for the benefit of the St. Paul & Pacific railroad, St. Vincent Extension.

February 8, 1879, you transmitted two maps showing the line of the road as constructed from Melrose, in section 34, 126, 33, to Alexandria, in section 18, 128, 37, and from a point in section 7, 154, 47, to St. Vincent, in section 2, 163, 51, with a branch from St. Vincent to the international boundary, in section 25, 164, 51, an estimated distance of 102 miles. Both maps are duly executed by the officers of the company January 23d, and by the Governor January 31, 1879. You declined to take any action on said maps other than to direct their filing, for the reason that the grant expired by limitation March 3, 1876, "prior to the completion of the road, and as it does not appear that said road is yet completed."

November 17, 1879, Messrs. Curtis, Earle & Burdette, attorneys,

filed in this office evidence showing that the St. Paul, Minneapolis & Manitoba Railway Company had become the legal successors of the St. Paul & Pacific Railroad Company.

January 16, 1880, there was referred to this office by the Department, without action, a map showing the line as constructed of the St. Paul, Minneapolis & Manitoba railroad from Alexandria to a point 12 miles south of the Northern Pacific railroad, an estimated distance of 80 miles. The map was sworn and subscribed by the chief engineer and certified by the general manager Decem-
1117 ber 23, 1879, and by the Governor January 9, 1880. It was accompanied by a letter from the Governor dated January 10, 1880, asking the certification of lands accordingly.

By the evidence on file, as above recited, it appears that the road is now fully completed. It was not completed within the time required by law, but, inasmuch as no forfeiture of the grant has been declared by competent authority, I am of opinion that, so far as that question is concerned the State would still be entitled to patents for the benefit of the road. Upon this point, however, I respectfully ask your instructions.

But the road has not been constructed on the line of definite location. I inclose a map or diagram of Minnesota, on which I have caused to be drawn a red line showing the definite location and a blue line showing the constructed road, illustrating, as nearly as practicable on so small a scale, the deviations. It will be seen at a glance that the deflections are numerous, and, in some instances, for long distances—from six to ten miles from the located line.

I am informed by counsel for the company that they are prepared to place before you evidence to show the necessity for the deflections in constructing the road, and the reasons why, in their opinion, the case should be held as coming within the rule established by the Department in recent decisions concerning other grants and involving like questions.

I have declined to submit lists of the lands selected until instructed by you in the premises.

Very respectfully your ob't serv't,

J. A. WILLIAMSON,
Commissioner.

1118 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 10, 1880.

SIR: I am in receipt of your report of the twenty-seventh of May last upon the status of the grant of lands made to the State of Minnesota to aid in the construction of a railroad from St. Cloud to St. Vincent, in that State.

The report and accompanying map show that a road has been constructed between the above-named points by a company recognized by the State authorities as being entitled to the benefits of the grant; that the road was not completed within the time directed by the statutes of the United States; that no forfeiture of the grant has been declared, and that the line of the road as constructed deviates in some places from the line of definite location indicated by the

map filed in this Department in 1871, upon which the withdrawal for the benefit of the grant was made, the largest deflections being between Glyndon and St. Vincent.

Upon these facts you submit two questions for my consideration, and request to be instructed in the premises:

First. Whether, considering the failure to complete the road within the time directed by the statute, the State is entitled to patents for the benefit of the St. Paul, Minneapolis & Manitoba Railway Company, the present owner of said road.

Second. Whether, in view of the deviations in the line of construction from the line of definite location, the State is entitled to patents under the grant for the benefit of said company.

1119 Upon the first point you express the opinion in effect that, notwithstanding the road was not completed within the time mentioned in the act of March 3, 1873 (17 Stat., 631), the State is entitled to patents under the grant.

I fully agree with you upon this point, the act of June 22, 1874 (18 Stat., 203), the conditions of which have not been accepted by the company, being held as neither enforcing nor declaring a forfeiture of the grant. (Kemper *v.* St Paul & Pacific R. R. Co., Copp's L. O., vol. 3, p. 170.) The law controlling this question is well settled. (Schulenberg *v.* Harriman, 21 Wall., 44.)

Upon the second point you express no opinion. The only question for determination, however, is whether the deflections in the line of the constructed road are of such character as to make it a different road from that contemplated by the granting acts and for which the withdrawal was intended. If the constructed road is not the one contemplated by the grant and withdrawal, then the State has no right to patents for the lands claimed.

But it is the road so contemplated if the deflections became necessary in order to avoid engineering obstacles which could not be otherwise overcome without exaggerated expense, or to remedy defects in the original location. In other words, if the road as constructed is a substantial compliance with the granting acts the State is entitled to the benefits of the grant. (Opinion of the Attorney General of Feb. 2, 1880, Copp's L. O., vol. 7, 12; case of McGregor Western R. R. Co., *id.*, 27; case of Hastings & Dakota R. R. Co., decided April 14, 1880.)

1120 Since your report was received the said company has filed in this Department affidavits showing why the road between Glyndon and St. Vincent was not constructed on the line as located in 1871. The affidavits were made by the following parties respectively:

Charles A. F. Morris, who was chief engineer of the St. Paul & Pacific R. R. Co. in the years 1871 and 1872, and who surveyed and located the line in 1871 and re-examined it preparatory to constructing the road between Glyndon and St. Vincent in 1872; Charles J. A. Morris, civil engineer, who was employed by said company in 1871 and 1872 in the location and construction of said road between the points aforesaid; Andrew De Graff, railroad constructor for said company, under whose personal supervision a large part of the St.

Vincent Extension road was built; Norman W. Kittson, whose business for many years required him to make journeys yearly from St. Paul to Manitoba via the Red River Valley, and who is well acquainted with the country through which said road is built; James J. Hill, who was engaged from 1868 to 1879 in the transportation business on the Red River of the North, between St. Paul and Winnipeg, in Manitoba, and who has passed through the Red River Valley at all seasons of the year and is well qualified to depose as to the facts alleged by him; and William P. Payte, a civil engineer well acquainted with the topography of the country through which said road passes.

The affidavits of these witnesses show that there are extensive swamps and marshes in townships 143, 144, 145, 146, 147, and 154, ranges 47 and 48, and in townships 156, 157, and 158, in ranges 49 and 50; that the season during which the location of 1871
1121 was surveyed was very dry in the section of country through which the road was so located; that at that time the said swamps and marshes were comparatively dry and the surveyors walked over them without difficulty; that the line was located over said swamps in the belief that it was a feasible route and upon which the necessary material could be easily obtained for grading and ballasting; that in the winter of 1871–'2 there were heavy falls of snow in that vicinity, and the weather of the spring and summer of 1872 was very wet; that upon a re-examination of said line in 1872, preparatory to commencing the construction of said road, it was found that the country for a great distance in the above-named townships, and over which the line of 1871 was located, was under water to the depth of several feet; that earth in sufficient quantities to raise the road-bed above water could not be obtained, except by hauling it for a long distance at great expense; that the largest of said swamps was in township 147, ranges 47 and 48, and was twelve miles wide; that said swamps were under water at certain seasons almost every year, and presented engineering difficulties in the way of building said road of such a character as to make it necessary to locate the line of construction far enough to the east to avoid the same; that the point of crossing the margin of the large swamp above mentioned governed the location of the road for many miles north and south thereof; that, upon careful examination, it was found that no ground over which it was practicable to build the road could be found nearer to the definitely-located line than to the east of said swamps and marshes where the road is constructed; that the point of crossing of Red Lake river at Crookston was the most fea-
1122 sible one and the best adapted for bridging that could be found for many miles in either direction; that no lands in that vicinity were settled upon or entered with reference to the line of definite location prior to the establishment of the line of actual construction; that the progress of settlement kept pace with the construction of the road; and that the road as built is the shortest and best practicable one that could be had between Glyndon and St. Vincent.

From the foregoing it is apparent that the deflections from the

line located in 1871 between the points last above mentioned were necessary to the proper construction of the road. It is clear that the road as now constructed is of immeasurably more value to the inhabitants of the Red River Valley along its line and better adapted to the purposes for which the road was intended than it would have been had it been built through said swamps and marshes, to say nothing of the extra expense of building and keeping it in repair over the latter route.

One of the principal objections to varying from the line of definite location in constructing a land-grant road does not exist in this case—viz., that settlers locate and purchase lands at the advanced rates in view of the definite location and for convenience to the road. The deflections south of Glyndon do not appear to be material.

I am therefore of opinion that the said road was built in substantial compliance with the requirements of the granting acts, and that the State is entitled to patents for the granted lands, and you will proceed in the work of the adjustment of the grant accordingly, having due regard to all conflicting claims to the lands.

1123 The affidavits aforesaid are herewith transmitted for filing in your office.

Very respectfully, C. SCHURZ, *Secretary.*

The Commissioner of the General Land Office.

Complainant's Exhibit "U," case St. P., M. & M. R'y Co. *v.* N. P. R. R. Co.

O. B. HILLIS, *Ex'r.*

COMPLAINANT'S EXHIBIT "V."

Memorandum of an agreement made this ninth day of December, 1870, by and between E. D. Litchfield, of the first part, and the Northern Pacific Railroad Company, of the second part.

The party of the first part hereby grants and sells to the party of the second part all the shares of stock in the First Division of the St. Paul & Pacific Railroad Company, together with all the franchises, rights, property, real and personal, including all the lands granted by Congress or the State of Minnesota to said company, and rolling stock and effects of any and every kind whatever connected with or belonging to the said St. Paul & Pacific Railroad Company or standing in the name of or belonging to the said Litchfield as connected with said road, excepting from the above five (5) shares of stock in the main line belonging to Mr. L. Willmar and three hundred and sixty shares in the branch line.

1124 In consideration whereof the party of the second part agrees to pay to the said Litchfield one hundred thousand dollars ($100,000) cash, four hundred thousand dollars ($400,000) in the notes of the Northern Pacific Railroad Company, payable in six, twelve, eighteen, and twenty-four months, with interest at six per cent., the receipt of which notes is hereby acknowledged; and also to

pay to the said Litchfield one million five hundred thousand dollars ($1,500,000) in coupon bonds, secured by a second mortgage on the main line of said road from St. Paul to Breckenridge, said bonds to bear interest from the twenty-second of November, 1870, and to be similar in form to the first-mortgage bonds upon said road, and to be delivered as soon as executed, or by the first of March, 1871.

Schedules of the equipment and other movable property, including machinery and tools, and also of the liabilities now outstanding and to be assumed and paid by the party of the first part, are hereunto attached. And the party of the first part covenants that there are no other outstanding liabilities against said company except the mortgage bonds hereinafter specified; and it is further agreed on the part of the party of the first part that in the event that any claim shall hereafter arise—growing out of the issues of the bonds or obligations formerly issued by the Minnesota & Pacific R. R. Co., or by the St. Paul & Pacific R. R. Co., First Division, to the State of Minnesota or to other parties, or for any claims of whatever nature, originating prior to the present organization of the St. Paul & Pacific R. R., First Division—the said party of the first part hereby covenants and agrees to fully indemnify and save harmless the said party of the second part from all liabilities on account of said
1125 claims or obligations to the amount of twenty-five thousand dollars; and he hereby agrees that in the issue of the bonds of the St. Paul & Pacific R. R. Co., as provided in this contract, to the said party of the first part the amount of twenty-five thousand dollars thereof shall be retained by the said party of the second part and held to indemnify them against the said claims.

The foregoing contract is made subject to the amount of bonds now outstanding of the mortgages on the main line of nine millions of dollars, and on the branch line of two millions of dollars.

(Seal N. P. R. R.)

THE NORTHERN PACIFIC R. R. CO.,
By J. GREGORY SMITH, *President.*
E. D. LITCHFIELD.

Attest: SAM'L WILKESON, *Secretary.*

Rec'd of E. D. L. powers of attorney for the transfer of 19,321 shares of the capital stock of the St. P. & P. R. R. Co., 1st Div'n, main line and branch, being the amount specified in the foregoing contract; also power of attorney for the transfer of 45,000 shares of said stock, to which he is entitled on completion of the main line of said road to Breckenridge.

THE NORTHERN PACIFIC R. R. CO.,
By J. GREGORY SMITH, *President.*

(Here follow in the original schedules of (1) "amount due on account construction main line, St. Paul & Pacific railroad, Nov. 22, 1870," and (2) "equipment, etc., referred to in above contract.")

1126 COMPLAINANT'S EXHIBIT "W."

This memorandum, made at the city of New York this twenty-second day of November, 1870, witnesseth: That the First Division of the St. Paul & Pacific Railroad Company of Minnesota, for the purpose of fully completing and equipping its main line from St. Anthony to Breckenridge in accordance with the terms of the contract heretofore made and entered into between it, the said company, and Mr. E. Darwin Litchfield, of London, England, undertakes and agrees to pay to said Litchfield or his legal representatives the sum of one million five hundred thousand dollars, or so much thereof as may be requisite and necessary for the purposes aforesaid, out of the proceeds of a new series of bonds to be by the said company issued, secured by a pledge of the franchises, land grants, and road-bed of the extension of the branch line of said company from St. Cloud or Sauk Rapids to Pembina.

Such payment to be in addition to the sums agreed to be paid by the terms of the contract hereinbefore referred to.

In consideration whereof the said E. Darwin Litchfield, for himself and his heirs or assigns, agrees and undertakes to complete the construction and equipment of said line pursuant to the terms of said contract, and waives all claim against the said company for any sum or sums reserved from proceeds of six-million loan for payment of interest on funded debt of said company.

This memorandum is made with the knowledge and approval of
Mr. L. Willmar, who represents the firm of Lippmann, Rosen-
1127 thal & Co., of Amsterdam, and of Mr. William G. Moorhead, who represents the interests of the Northern Pacific Railroad Company in the subject-matter hereof.

Dated New York, November 22, 1870.

THE FIRST DIVISION OF THE ST. PAUL & PACIFIC RAILROAD COMPANY,
By GEO. L. BECKER, *President.*
E. D. LITCHFIELD.
L. WILLMAR.
W. G. MOORHEAD.

COMPLAINANT'S EXHIBIT "X."

At a meeting of the board of directors of the First Division of the St. Paul & Pacific Railroad Company, held at their office in St. Paul, Minn., on the twenty-ninth day of November, A. D. 1870, pursuant to call by the president, and notice given, the following directors were present: Messrs. L. Willmar, E. D. Litchfield, G. L. Becker, T. B. Campbell, L. Gorton, Jared Benson, and Hermann Trott.

Mr. Becker offered the following resolutions, which were, upon motion, unanimously adopted:

Resolved, That the claim of Mr. E. D. Litchfield, amounting to $736,155.65, for coupons paid and interest on same and money advanced to company, now standing to his credit on the books of the

company, be paid by an issue of shares to that amount, and the secretary and president be directed to issue shares to him for that sum.

Resolved, That for the purpose of constructing and equip-
1128 ping the extension of the branch line from some point at or near St. Cloud or Sauk Rapids to St. Vincent, on the Red River of the North, near Pembina, there is hereby authorized an issue of the bonds of this company amounting to fifteen millions of dollars in bonds of $1,000 each, making 15,000 bonds in all, with interest at seven per cent. per annum, payable semi-annually in New York or in London at a rate of exchange of four shillings sterling per dollar, according to coupons to be to said bonds attached, the principal to become due in thirty years from date, either in New York or London, and if in London at the same rate of exchange as is provided for the interest, and that William G. Moorhead, Horace Thompson, and Geo. L. Becker be named as the trustees for said issue of bonds.

Resolved, That for the purpose of securing the payment of the principal and interest of said bonds a trust deed be authorized on the part of the company pledging the franchises, land grant, roadbed, and equipment belonging or appertaining to said proposed extension.

Resolved, That the president and secretary of the company be authorized and directed to execute the trust deed and sign the bonds herein specified and to attach to them and all of them respectively the seal of the company.

Resolved, That the president of the company be directed to send the bonds, when prepared and issued, to Lippmann, Rosenthal & Co., of Amsterdam, Holland, for negotiation upon such terms as may be agreed upon by the president and said firm.

Resolved, That the main line, as now constructed and completed to Benson, on the Chippeway river, be accepted by this board on behalf of the company.

1129 Resolved, That until further directed by the board all purchases made for this company shall be made under authority of the president, and that all supplies shall be distributed under his direction upon requisitions made in due form, and that the president be requested to give effect to this resolution.

Messrs. Jared Benson, Leandor Gorton, and Hermann Trott tendered their resignation as directors of this company, which was accepted and said vacancies filled by the election of Messrs. J. Gregory Smith, Wm. G. Moorhead, and Richard D. Rice.

Complainant's Exhibit "Y."

At a meeting of the directors of the First Division of the St. Paul & Pacific R. R. Co., held at 120 Broadway, New York city, on the twenty-second day of December, 1870, on motion of J. Gregory Smith, it was—

Resolved, Whereas the preliminaries of an arrangement have this day been agreed upon between the First Division of the St. Paul & Pacific Railroad Company and the St. Paul & Pacific Railroad

Company, having for its object the construction of the line of railroad from some point at or near St. Cloud to St. Vincent, in the State of Minnesota, and for the operation and management of said road after its completion as aforesaid for a term of years not exceeding ninety-nine;

And whereas by the terms of said arrangement the bonds of this company are to be issued to an amount not exceeding
1130 fifteen millions of dollars, payable thirty years after date, with interest at the rate of seven per cent. per annum, payable semi-annually in New York or London, to construct and equip said line of road;

And whereas, also, by the terms of said arrangement the said The St. Paul & Pacific Railroad Company agrees to execute a mortgage or trust deed to the First Division of the St. Paul & Pacific Railroad Company covering all the land grants, franchises, road-bed, and equipment pertaining to the line of road hereinbefore mentioned to secure the issue of bonds by this company as aforesaid:

Therefore be it resolved, The president and secretary of this company be authorized to enter into an agreement with the St. Paul & Pacific Railroad Company for the construction, equipment, and operation of said proposed line of railway upon the basis hereinbefore mentioned.

Resolved, That the president and secretary of the company, upon the execution of the mortgage or trust deed aforesaid, be authorized and directed to issue in proper form the bonds of this company, bearing seven per cent. interest, semi-annually, and payable in thirty years from January 1, 1870, for an amount sufficient for the completion and equipment of said line of road, not exceeding in all fifteen millions of dollars; said bonds, principal and interest, to be made payable in New York or London, at the option of the holder, at the rate of four shillings sterling to the dollar.

Resolved, That for the purpose hereinbefore contemplated, the following-named gentlemen be constituted and named the trustees, to wit, George L. Becker, Horace Thompson, and William G. Moorhead.

1131 COMPLAINANT'S EXHIBIT "Z."

"ST PAUL, 25 *December*, 1871.

"Mr. William G. Moorhead, Philadelphia.

"MY DEAR SIR: Your telegram of the eighteenth inst. informed me that the Fergus Falls line had been adopted at Washington. I am without other advices, but take it for granted that our wishes in this regard have prevailed.

"The adoption of this line by the company, with the consent of the Federal authority, brings us to a practical question of more than ordinary importance to us and to the Northern Pacific Railroad Company. I refer to the adjustment of the land grant between the two companies where they come in conflict with each other.

"You will find this question referred to by Col. Loomis, land

commissioner of the Northern Pacific, in his report to the land committee (published), No. one, dated May 30, 1871, pp. 12, 13, 14. Our lines from Crow Wing to Brainerd and from St. Cloud to St. Vincent had not then been located, and his estimate of quantities for this reason does not correspond fully with the calculation which I shall submit to you.

"The enclosed map has been prepard for the purpose of illustrating the subject.

"I think that for the Brainerd Extension, Watab, via Crow Wing, to Brainerd, *that* we can secure our full grant—ten sections per mile, within the twenty-mile limits, between Watab and Crow Wing. This line to Crow Wing was loccated long ago and the land limits fixed. If I am correct in this no question will
1132 arise on this line, and we may confine our attention to the St. Cloud and St. Vincent Extension.

"On this line we meet with the following difficulties in the way of obtaining a full land grant (ten sections per mile) for the St. Paul & Pacific Railroad Co.:

"For about 120 miles of the line, from St. Vincent southward, the townships have not yet been subdivided by the Government, and for the whole length of the line no land-grant limit lines have been established. On the map I have endeavored to show the limits as the law fixes them, the different colors representing the claims of the different lines.

"According to a decision of the Commissioner of the General Land Office in a case affecting the land grant of the Breckenridge line, our land limits cannot extend beyond the boundaries of Minnesota into the Territory of Dakota.

"I send you herewith a copy of Mr. Trott's letter to the Commissioner, dated Sept. 7, 1871, raising the question, and copy of the decision of the Commissioner, dated Nov. 24, 1871.

"According to my view, the Commissioner is wholly wrong, except in what he says about Indian Territory, and I suggest that a proper representation to the Secretary of the Interior would, perhaps, reverse the decision of the Commissioner and so afford us considerable relief.

"My estimate, however, is based upon the supposition that the Commissioner's ruling will stand, and that the claims of the N. P. take precedence of those of the St. P. & P.

"Commencing, then, at St. Cloud, we find that the St. Vincent line runs through the established limits of the branch line land grant for a distance of twenty-seven miles. We are thus deficient for this length of line ten sections per mile, or 270 sections. From
1133 the western line of the branch line land limits to the point where our located road first intersects the Northern Pacific land limits—101 miles—I estimate that we shall not get more than one-quarter of the full grant, and consequently for this distance we fall short three-fourths of our full grant, or 756 sections.

"Through the Northern Pacific land limits our road runs 68 miles, and thus we are short here 680 sections.

"From the northern line of the N. P. land limits to St. Vincent,

by reason of the proximity of our road to the Dakota boundary as we approach our terminus, we find a deficiency (under ruling of Commissioner) which I estimate at 80 sections.

"*Recapitulation of Deficiencies.*

"On account of location through branch line lands	270	sections.
"On account of conflict with Northern Pacific line, 756 sections, plus 680	1,436	"
"On account of vicinity of road to Dakota boundary as we approach St. Vincent	80	"
"Making a total of	1,786	sections.

"To make up this deficiency we have the ten-mile deficiency limits on east side of road, from northern line of Northern Pacific land limits to British boundary, giving us five sections per mile for 118 miles—590 sections.

"You will observe that the land limits of the Breckenridge line take some lands from the St. Vincent Extension. The Breckenridge line can get its full grant without taking any of these lands so falling within the land limits of the St. Vincent Extension.

1134 "If the Department will allow us to make up deficiencies for the Breckenridge road elsewhere as we can we shall get 250 sections more for our St. Vincent road.

"If the Northern Pacific gives the St. Vincent road a priority through its said limits we shall get 1,020 sections more.

"These arrangements, if effected, will altogether yield us 1,860 sections, or an apparent surplus over our estimated deficiencies of 74 sections.

"These 74 sections will probably be required for deficiencies caused by settlements made on railroad lands under the homestead and pre-emption laws, and for which I have not hereinbefore made calculation.

"In order to enable us to get the full grant which by our mortgage we have pledged to our bondholders, it is important, first of all, that the Northern Pacific should yield to the St. Paul & Pacific a priority of right to lands where they come in conflict.

"It is also desirable to get the ruling of the Commissioner of the General Land Office reversed, so that we may extend our land limits west of Red River into Dakota.

"And, lastly, that the land grant for our Breckenridge line be adjusted by the Washington authorities, without including any of the lands which would otherwise fall to the St. Vincent Extension.

"This company (the First Division of the St. P. & Pacific) will do anything required of it to accomplish the last proposition, provided it will be allowed to make up, as it easily can, its deficiencies elsewhere within its proper land limits.

"I think the counsel of the Northern Pacific, upon an argument before the Secretary of the Interior, can reverse the de-

1135 cision of the Commissioner of the General Land Office which keeps us out of Dakota.

"It only remains, then, for the North Pacific to give the St. Paul & Pacific, where these two companies come in conflict, the priority which I think the latter can rightfully claim.

"It is fortunate, upon all sides, that the ownership of the two lines and accompanying land grants are now identical. If it were not for this I should despair of a peaceable solution of the question. In either event, whether the lands go to the Northern Pacific or the St. Paul & Pacific, the Northern Pacific R. R. Co. is the virtual owner.

"I think the St. Paul and Pacific may rightfully claim priority, because its grant is of an earlier date, though the location of the line and the construction of road is subsequent to that of the Northern Pacific.

"It is worthy of consideration, too, that if priority is conceded to the St. Paul & Pacific it takes but ten sections per mile from the Northern Pacific land grant for a limited distance, and that for this deficiency the Northern Pacific, under its legislation, has an ample field wherein to make up its loss.

"Whereas, if the Northern Pacific takes the priority, it takes within the same distance from the St. Paul & Pacific twenty sections per mile, and the latter company has no place to go to find its deficiency lands.

"In other words, if the Northern Pacific claims and takes priority there is an absolute loss to the two companies of 1,436 sections, and no opportunity of making it up, and if the St. Paul & Pacific takes the priority both companies will get their full allowance.

1136 "I desire to have you bring this matter before the Northern Pacific board, that it may be finally settled at an early day.

"We stand in a peculiar relation to our bondholders upon this subject. We have pledged a full land grant of ten sections per mile as a security for the money they loan us. I think I have shown how this full land grant can be secured without detriment or resulting loss to anybody, and we shall not be true and faithful to ourselves and to them if through any fault or negligence of our own we fail to secure the full quantity of lands pledged.

"Will you please give me your own views hereon and such assurances as you can to relieve my apprehensions with reference to the subject?

"Very truly yours, GEO. L. BECKER."

"PHILADELPHIA, *January* 28, 1872.

"MY DEAR SIR: Your favor twenty-fifth is before me. I fully appreciate the importance of its contents, and will press the matter at meeting of N. P. board on Wednesday next, in New York. I regret that there has been so much delay in this arrangement, but trust prompt action on the part of Gov. Smith will remedy the difficulty. The Governor and General Cass fully intended visiting you, as suggested, but they could not accomplish it. I hope after some time to be able to give those interests more personal attention. I

regard them very important in the development of the railroad system of your State. I received cable from Mr. Willmar requesting documents to be sent forward. I sent it to Gov. Smith
1137 to answer; hope you will write in reply to my telegram just sent. I meant by that your suggestions and general plan, etc. You are familiar with the subject. I have heard nothing yet from Mr. Willmar in regard to permission to draw on Europe; hope to very soon.

"Respectfully yours, WM. G. MOORHEAD."

"ST. PAUL, *March 5th*, 1873.

"Wm. G. Moorhead, Esq.

"DEAR SIR: Mr. Trott telegraphed me yesterday of the final passage of our bill through Congress, extending the time for the completion of our Brainard and St. Vincent Extensions. A bill of like tenor (copy enclosed) has also passed our State Legislature, so that the requirements of our Amsterdam friends in this regard are fully met.

"There now remains but one other matter to be adjusted in connection with this land grant—that is, the priority of claim to the lands within the conflicting limits of our extensions and those of the Northern Pacific R. R. Company. I trust you will pardon my urgency in pressing upon your attention the settlement of this question, but as trustee (with yourself) for the bondholders I feel that they have a right to look to us to use every proper effort to secure for them the full land security pledged in the mortgage upon the faith of which they made their investments.

"You will bear in mind that while the bonds sold are the bonds of this company, they are secured by a mortgage executed by
1138 the St. Paul & Pacific R. R. Co. The mortgage recites a full land grant for the extensions as a security for the bonds. Every member of the St. Paul & Pacific board, with the single exception of Mr. Edmund Rice, is also a member of the Northern Pacific board. These facts, aside from what was repeatedly said at the time of the execution of the papers, by members of your board on the subject, make this transaction virtually an affair of the N. P. R. R. Co., and, it seems to me, binds them to make the security good, so far as is in their power. The claim of this company to priority being conceded and the lands so secured to us, the pledges in this behalf will be fully redeemed and no further excuse will remain for the withholding means for completing the lines.

"I have no doubt at all that such an adjustment is strictly in accordance with our legal rights; but there is no time and I hope no occasion for a resort to courts to settle this matter as between the companies.

"I sincerely hope that the Northern Pacific R. R. Company will realize the vital importance of an early adjustment in accordance herewith, and not let our enterprise fail for want of what has heretofore been admitted to be our due. A change from their present passive attitude on this subject to one of quiet but active co-operation, while it will secure such a decision as we desire at the Interior

Department, will also acquit them of any possible charge of bad faith in the premises. It is not necessary that they should act openly or officially at the Department. A statement of the facts verbally to the secretary by some one whose position authorizes him to speak for the N. P. R. R. Co., with an intimation that the justice of our claim is conceded, will, in connection with our own
1139 presentation of the case, secure the desired result. A merely passive attitude will, on the contrary, so hinder and delay the matter as to defeat altogether what we all desire to consummate.

"I do not expect again to allude to this subject. Its great importance must excuse the length of my letter and my plainness of speech.

"Yours very truly, GEORGE L. BECKER."

"NEW YORK, *March 15th*, 1873.

"Geo. L. Becker, Esq.

"DEAR SIR: Mr. Wm. G. Moorhead read to our board of directors your recent communication to him relative to the land grant of the St. Paul & Pacific Railroad Company, as to which there may be a conflict with the land grant to this company.

"Our board is entirely willing and, I may add, quite desirous to do all they can do to give such assurances in regard to the title of said lands as will accomplish at once the construction of the St. Paul & Pacific road.

"You are, of course, aware without my telling you that no consent this company may give would avail anything toward a perfect title without the consent of the trustees in our mortgage, and as to them I think I may say that they fully sympathize with your board for the completion of the St. Paul & Pacific.

"I understand that the Secretary of the Interior is now withholding patents for this company on the alleged intervention of some purchasers of land at or near Glyndon. Why or how they
1140 came to intervene I am not informed. It seems to me it will be quite as well—and, perhaps, for the present, the best way—that the patents should not issue to either company until some arrangements shall be made which shall assure the completion of the St. Paul & Pacific R. R.

"For such an assurance the directors of this company will doubtless concede everything you ask.

"It is hardly possible to make such arrangements by letter as will accomplish what we all desire. Therefore I suggest that you arrange to come here.

"Mr. Moorhead, as you perhaps know, left here yesterday for San Francisco, to be absent about 30 days—perhaps not so long.

"Yours truly, "G. W. CASS, *Pres't.*

COMPLAINANT'S EXHIBIT "A 1."

(NOTE.—This exhibit and Exhibits "B 1," "C 1," "D 1," and "E 1" show the lands in Minnesota patented to the Northern Pacific Railroad Co.

Exhibit "F 1" shows the approved selections by the Northern Pacific R. R. Co. of lands in Minnesota for which patents have not been issued.

Also lands sold by the Northern Pacific R. R. Co. from among those included in the lists appended to the complainant's supplemental bill of complaint.

These exhibits, here omitted, or the substance of them, will be found *infra*, following complainant's Exhibit "N 1.")

1141 COMPLAINANT'S EXHIBIT "G 1."

United States Circuit Court for the District of Minnesota.

Term Minutes.

December Term, A. D. 1878.

APRIL 11, 1879.

Present: Hon. Rensselaer R. Nelson, judge.

JACOB S. WETMORE, THOMAS W. PEARSALL, and THOMAS DENNY, as Trustees, etc.,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, THE First Division of the St. Paul & Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and Charles A. F. Morris. } In Equity.

Decree.

The cause having been duly brought on for a hearing upon the bill of complaint of said complainants, the several answers
1142 of the defendant, The Saint Paul & Pacific Railroad Company, and the defendant, The First Division of the Saint Paul & Pacific Railroad Company, and the proofs taken, and the same being argued by counsel, the court, being fully advised in the premises, doth hereby order, adjudge, and decree:

First. That on the first day of April, 1871, the defendants, The Saint Paul & Pacific Railroad Company and The First Division of the Saint Paul & Pacific Railroad Company, entered into that certain agreement in writing, and also into that certain lease in writing, copies whereof are set forth and annexed to said bill of complaint and marked Exhibits "A" and "B" thereto respectively.

Second. That pursuant to said agreement in writing and said lease so executed and delivered between said defendant railroad companies, and on said first day of April, 1871, the said defendant, The Saint Paul & Pacific Railroad Company, duly made, executed, and delivered the mortgage or deed of trust in said bill of complaint named, and of which Exhibit "C" to said bill of complaint is a correct copy; and thereupon the defendant, The First Division of the Saint Paul & Pacific Railroad Company, pursuant to said agreement and lease, did make, execute, and issue its bonds to the amount of

fifteen millions of dollars, bearing date on said first day of April, 1871, payable thirty years thereafter, of the date and denomination and payable, principal and interest, at the time and place and in all respects as provided for in said agreement, Exhibit "A" to said bill of complaint, the interest on said bonds being payable semi-annually, on the first days of January and July in each year, in
1143 lawful money of the United States, on presentation and surrender of the coupons thereto annexed as they should severally come due, at the office or agency of said defendant, The First Division of the Saint Paul & Pacific Railroad Company, in the city of New York, or in British pounds sterling at the rate of four shillings for each dollar, on presentation and surrender of such coupons respectively at the banking-house of Robert Benson & Co., in London, England, at the option of the holder; that said $15,000,000 of bonds are all outstanding and unpaid and in the hands of *bona fide* holders thereof for value.

Third. That the defendants, Horace Thompson, George L. Becker, and William G. Moorhead, were all duly removed from their trusteeship under said mortgage, and the complainants were duly appointed their successors to the trusts thereunder, and duly accepted said trusts at the time, in the manner, and as set forth in said bill of complaint, and thereby became and are the trustees in said mortgage or deed or trust in the place and stead of the said Horace Thompson, George L. Becker, and William G. Moorhead.

Fourth. That said mortgage or deed of trust was and is sufficient in form to convey and mortgage all and singular the lines of railroad, land grants, lands, property, and franchises in said mortgage described as follows, viz: All and singular the line of railroad of the said corporation, the Saint Paul & Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Kittson and State of Minnesota, and also all and singular the line of railroad which said defendant corporation, the Saint
1144 Paul & Pacific Railroad Company, was authorized to construct from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town, as contemplated by the act of Congress approved March 3, 1871, in the complaint named, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges, and corporate or other franchises thereunto respectively belonging or in anywise appertaining, or which should or might at any time thereafter thereunto belong or in anywise appertain, and also all right, title, and interest which said defendant, The Saint Paul & Pacific Railroad Company, then had, or that it or its successors or assigns might at any time afterwards acquire, by reason of the construction of said railroads, or of either or of any part of either thereof, or otherwise, in, to, or concerning the lands situate, lying, and being in the State of Minnesota which are embraced or intended to be embraced in the grants aforesaid or either of them made by the Congress of the United States to the former Territory and present State of Minne-

sota by the acts of said Congress approved March 3, 1857, October 1, 1865, and March 3, 1871, respectively, in the bill of complaint named, and which then had been granted by said State to said last-named railroad company, or should or might be granted or conveyed to it, its successors or assigns, to aid in the construction of the said lines of railroad, or of either or of any part of either thereof, including in the premises thereby conveyed the road-beds of the said railroads respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-
1145 houses, wood-houses, machine shops and other shops, and all other structures, buildings, and materials whatsoever placed or to be placed on the said railroads respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools and implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads, or either or any part of either thereof, or any of the equipments or appurtenances of said railroads, or of either or any part of either thereof, then held by the said Saint Paul & Pacific Railroad Company, or thereafter to be acquired by the same, its successors or assigns, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said St. Paul & Pacific Railroad Company in, to, and concerning the same and each and every part and parcel thereof, with the appurtenances; and that the same, upon the execution and delivery of said deed of trust and mortgage to the predecessors of the said complainants, became subject to the lien thereof.

Fifth. That the interest coupons upon all the bonds so issued falling due and payable on the first day of January, 1875, and the interest coupons thereon falling due each half year thereafter remain wholly unpaid; that the said First Division of the Saint Paul & Pacific Railroad Company and the said — Paul & Pacific Rail-
1146 road Company have both defaulted thereon; that on the first day of January, A. D. 1875, demand of payment upon said overdue coupons or a large portion thereof was duly made upon the said First Division of the St. Paul & Pacific Railroad Company at the banking-house of Robert Benson & Co., in the city of London, England, where the same were payable, with an offer to surrender up said coupons upon such payment, but that payment thereof was refused for want of funds, and that said coupons were thereupon duly protested for non-payment, and notice of such demand, non-payment, and protest was thereupon duly given to said defendant corporations and to each of them; and it was in and by each of said bonds provided that if default should be made in the payment of any half-yearly instalment of interest, and such default should continue for six months, payment of such instalment having been demanded of the corporation, the principal of such bond should be-

come immediately due and payable, at the option of the trustees in the said mortgage and as in said mortgage provided; that such default continued for more than six months prior to the commencement of this suit, and that by reason of such default and by the terms and conditions of the said mortgage or deed of trust the complainants duly elected to declare the principal sum of said bonds to be due, and there is now due and unpaid upon the said bonded indebtedness the principal sum and amount of $15,000,000 and the interest thereon from July 1, 1874, which said principal and interest is as aforesaid a lien upon the said mortgaged property and franchises, as heretofore specially found.

Sixth. That it is manifestly to the interest and advantage of the said trust so represented by said complainants and of all
1147 the parties in the premises that the said lands so granted by Congress, now held, or to which the said defendant, The Saint Paul & Pacific Railroad Company has right, together with all and singular its property so as aforesaid subject to the lien of the said mortgage or deed of trust, including the said lines of railroad and all the franchises, privileges, and immunities, including the franchise to be a corporation, should be sold as one property, and not separately or in parcels.

Seventh. That heretofore and on the fourteenth day of July, 1873, John S. Kennedy and others, in behalf of themselves and the other holders of the said mortgage bonds of said $15,000,000 issue of said First Division of the St. Paul & Pacific Railroad Company, filed their bill of complaint on the equity side of this court, praying, among other things, that a receiver be appointed of all and singular the said mortgaged railroad and appurtenances and land grants, with authority to complete the construction of the then uncompleted portion of said railroad, and with authority for that purpose to borrow money and secure the repayment of the sum so borrowed, with interest, by preference on said mortgaged property; that in such suit such proceedings were had that by order of this court made therein August 1, 1873, Jesse P. Farley, Esq., was duly appointed receiver of said mortgaged railroad and property, and in and by said order, and by further order made September 1, 1873, was duly authorized to complete said unfinished portion of said railroad, and for that purpose to borrow money and to issue to the persons advancing the same his debentures to the amount, in the form, with the interest, and upon the terms of payment and security in said order provided.

1148 That pursuant to the terms of said orders the said receiver did proceed to complete a portion of said uncompleted line of railroad, and for that purpose did borrow the sum of $100,000, and to secure the repayment thereof did duly issue his debentures, as provided in said orders, to said amount, being one thousand in number, of the denomination of one hundred dollars each, and numbered consecutively from one to one thousand, inclusive, bearing date October 1, 1873, payable five years thereafter, unless sooner paid, with interest at the rate of ten per cent. per annum, payable

in the city of New York, according to the tenor of the interest coupons or warrants thereto attached.

That of said debentures there are now outstanding and unpaid 900 debentures, on which there is due at the date of this decree, for principal and interest, the sum of ($90,000) ninety thousand dollars, and the lien of which debentures, to the amount so as aforesaid due thereon, is, by the terms of said orders, a lien on the said mortgaged railroad, lands, and other property prior and paramount to the lien of said mortgage or any other lien whatever.

That thereafter and in the same suit last aforesaid, on the application of the said receiver for leave to proceed further in the construction of the unfinished portion of said lines between Melrose and Fergus Falls and between Crookston and St. Vincent, the said receiver was, by order of this court made in said suit May 31, 1878, duly authorized and empowered to proceed with the construction of said lines with moneys to be furnished by George Stephen and others, as therein provided, and in and by said order provision was made for the issuance by said receiver to the said persons so furnishing said moneys of debentures for the amount so to be
1149 advanced by them upon the conditions in said order prescribed.

That thereupon, in compliance with the terms of said order of May 31, 1878, the said receiver did complete and equip those portions of said unfinished lines extending from Melrose to Alexandria and from Crookston to St. Vincent and the international boundary line at Emerson.

That thereafter and on December 20, 1878, a further order was made by this court in said suit, whereby the said receiver was authorized and directed to issue to said George Stephen and others, on account of moneys so advanced by them for the completion of said lines, his debentures to the amount of $800,000, of the form, with the lien, and upon the terms of payment, as to principal and interest, in said order provided.

That thereafter and pursuant to the terms of said order said receiver did duly make and deliver to said George Stephen and others his debentures to the said amount of $800,000, being 25 debentures of $1,000 each, 25 debentures of $5,000, 25 debentures of $10,000, and 20 debentures of $20,000 each, and being in all 95 debentures, numbered consecutively from 1 to 95, inclusive, bearing date the second day of December, 1878, and payable three years thereafter, unless sooner paid, with interest at the rate of eight per cent. per annum, payable semi-annually, according to the terms of interest coupons thereto annexed, the principal and interest of said debentures being payable in gold coin of the United States of the then standard *of* weight and fineness.

That in and by said order it is provided that such debentures may be declared to be due and payable at any time prior to the date of payment therein named; and it is further provided that said debentures shall be a lien prior and paramount to the lien of said
1150 mortgage or any other lien, except the lien of said debentures theretofore issued by said receiver upon the said line

of railroad from Crookston to St. Vincent and the international boundary line at Emerson and the said line from Melrose to Alexandria and the appurtenances of said lines and the lands granted by Congress and the State of Minnesota to aid in the construction of said mortgaged railroad and appertaining to said lines, but not a lien on any other portion of said mortgaged premises unless the court should thereafter so order, and the power was reserved by the court to extend the lien of said debentures over all the property of said railroad company if to the court such extension should seem just and equitable.

That in and by said order of May 31, 1878, it was further provided that any bondholder under the said $15,000,000 mortgage might at any time before the issue of said debentures therein authorized—and, if the court should think it just, at any time before the sale of said property under decree of foreclosure—be entitled to equal rights with said Stephen and others in respect to said debentures and the lien thereof upon the conditions in said order prescribed.

That in and by said order of December 20, 1878, the power was reserved to make further provision for securing to such bondholders the right to share in such debentures.

That, although public notice was given of the terms of said order, none of such bondholders have as yet complied with said conditions or applied for any of said debentures.

That the last-named debentures are hereby declared to be due and payable, and there is now due thereon the principal sum of eight hundred thousand dollars and interest thereon from December 2, 1879, at the rate of eight per cent. per annum.

1151 Eighth. That the said defendant, The First Division of the Saint Paul & Pacific Railroad Company, or the defendant, The Saint Paul & Pacific Railroad Company, pay or cause to be paid to the said complainants, as trustees for the holders of said bonds and coupons, the amount of bonded indebtedness adjudged due as aforesaid on the said mortgage or deed of trust, with interest thereon, within five days from and after the entry of this decree; and in default thereof that all and singular said mortgaged premises, property, rights, immunities, and franchises hereinbefore and in said bill of complaint described and enumerated be sold at public auction by or under the direction of Horatio E. Mann, Esq., one of the masters of this court, at the eastern-front door of the United States custom-house building, where this court holds its sessions, in the city of Saint Paul and district of Minnesota aforesaid; that the same be sold as one parcel and as an entire property to the highest and best bidder therefor, unless said defendant corporations or one of them or other defendant shall, prior to the day appointed for such sale, pay the full amount of principal and interest so found due as aforesaid upon said bonds and coupons, with the accruing interest, together with the costs and expenses of this suit hereinafter adjudged to be paid, including the expenses of advertisement and other proceedings to effect such sale: Provided, That said property shall not be sold for a price less than one million five hundred thousand dollars; that the right and equity of redemption of the said defendants

and each of them and of all persons claiming by, through, or under them or either of them shall be absolutely foreclosed and barred, save only such right of redemption, if any, as may exist under the statutes of Minnesota, and the said property shall, in case of
1152 non-payment as aforesaid within the time aforesaid, be sold to the highest and best bidder; that the said Horatio E. Mann, as such master, give public notice of the time and place of such sale, according to the course and practice of this court—that is to say, by causing the publication of such notice of sale in some one of the daily newspapers of the city of Saint Paul at least once a week for at least six weeks prior to the day of such sale; that at the time of such sale the purchaser or purchasers shall pay to the said master the sum of at least $50,000 in cash as part payment, to be forfeited in case of non-compliance with the terms of sale, and the balance of the purchase-money shall be paid within fifteen days thereafter, and upon such payment and the confirmation of the said sale by this court the said master shall execute and deliver a certificate or deed of conveyance of the premises to the purchaser or purchasers thereof: Provided, however, that in the payment of such balance the said debentures of each of said issues and the coupons thereof and the interest due on said debentures and coupons shall be taken and received as cash, and the said mortgage bonds and the overdue and unpaid coupons of said bonds may be taken as cash, said bonds and coupons thereof in such case to be taken only for such an amount as would equal the dividend to which they would respectively be finally entitled *pro rata* under this decree; that said sale be reported to this court for such other order, decree, or proceeding as to this court shall seem meet and as to equity may pertain.

Ninth. And it is further ordered, adjudged, and decreed that all moneys which may be realized from the sale of said mort-
1153 gaged premises be paid into the registry of this court, and that the same be applied, first, to the costs and expenses of this suit, to be taxed and allowed as aforesaid, and next to the sums which may be found due the plaintiffs and their predecessors as such trustees as and for their compensation for services and disbursements, including reasonable counsel fees, and next to the payment in full of the amount due on said first-issued debentures, and next to the payment in full of the amounts due on said last-issued debentures, and next to the payment of the bondholders aforesaid *pro rata* of the amounts then due to them respectively under the provisions of this decree, upon their said bonds or coupons, as the case may be, such debenture, bond, or coupon holder receiving any such payment being required to produce his debentures, bonds, or coupons to the end that the same may be concelled if the same be paid in full, or may otherwise be subjected to indorsement of the amount actually paid thereon.

In case the railroad and lands and property hereinafter mentioned are offered for sale and the bids for the same shall not, in the opinion of the plaintiffs, be adequate in amount or approximate the fair value of the said railroad, lands, and property thus exposed for sale then it shall be the duty of the trustees, plaintiffs herein, to pur-

chase the same for the benefit of all the bondholders, pursuant to the provisions of the mortgage herein foreclosed; and in such case the court may, upon the application of any debenture holder, order a sale of so much of said railroad and property as may be subject to the lien of the debentures issued as aforesaid then outstanding or unpaid for the payment thereof.

1154 Tenth. And it is hereby referred to Horatio E. Mann, one of the masters of this court, to take and state the account of the plaintiffs, as such trustees, under the said mortgage and the account of the predecessors of the plaintiffs in the said trusts, including all sums of money pertaining to said trusts, if any, which have come to their or either of their hands, as such trustees, from any source whatever, and the disbursements or other application of the same, and also including the proof and ascertainment of the sums or amount of compensation which should, in his opinion, be allowed to the said trustees and their predecessors, respectively, for their services as such trustees or for other services which may have been necessarily rendered by them or either of them in or relating to the said trusts or concerning the said trust property, and including the conduct and management of this suit and of any other necessary suits or proceedings relating or incident thereto or for the protection of the said trust property, and including all disbursements and other charges properly made or incurred by them or by others in their behalf therein and properly chargeable to the expense of the trust under the said mortgage, and that proofs of such matters, where witnesses reside out of the State, may, if necessary, be taken on notice as provided by law or on commission, and that in taking such account he make all just allowances to said trustees, and that he report thereon to this court, together with the evidence taken by him on such reference and his opinion thereon.

And it is further ordered, adjudged, and decreed that the plaintiffs and their said predecessors as such trustees herein are en-

1155 titled under said mortgage and deed of trust to reasonable compensation for their services performed by them or either of them in the execution of said trusts and in any manner connected therewith, including the conduct and management of this suit and any other suits or proceedings necessary for the protection of the trust property, to be paid out of the proceeds of said sale, to be determined upon the coming in of said report.

Any bondholder or the trustees, plaintiffs herein, may become the purchaser of said mortgaged property under this decree, in accordance with the terms and conditions herein provided.

It is further ordered, adjudged, and decreed that the purchaser or purchasers at said sale shall fully pay all sums due and owing by said defendant railroad corporations or either of them to any servant or employé of said corporations or either of them: And provided also, that the rights and property of any person, persons, or copartnerships in and to any warehouse, side track, or other structure erected on the right of way on said line of said railroad shall be and are hereby saved, preserved, and protected so as to save, preserve, and protect the equitable rights of all parties interested.

And it is further ordered, adjudged, and decreed that in case the purchaser or purchasers shall form a new corporation and acquire the rights and franchises of the said company by conveyance, as provided in section 21 of chapter 1 of the act of the legislative assembly of the Territory of Minnesota entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of lands to the Territory of Minnesota, in alternate sections, to
1156 aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," approved May 22, 1857—which conveyance the said trustees are hereby authorized and directed to execute and deliver to such purchaser or their successors or assigns on demand—or shall form a new corporation under the provisions of an act of the Legislature of the State of Minnesota entitled "An act to amend title 1, chapter 34, of the General Statutes, relating to corporations," approved March 6, 1876, or under any law of the State of Minnesota, that such purchaser or purchasers or new corporations shall complete all legal and subsisting contracts for sale of the lands of said Saint Paul & Pacific Railroad Company, and upon performance on the part of any purchaser of such lands to convey the real estate as purchased in pursuance of the contract or contracts subsisting.

And it is further ordered, adjudged, and decreed that the right secured by said order of May 31, 1878, to any bondholder to acquire a share in said debentures, on the terms therein provided, be, and the same is hereby, extended until the day of sale of said mortgaged property under this decree.

And the court doth hereby reserve the right, on the confirmation of the sale herein provided for, to make an order, if it shall then seem equitable so to do, whereby the outstanding bondholders may, within a short limited time then to be fixed by the court, be allowed to come into the reorganization herein above mentioned, if
1157 any such shall then or thereafter be formed, on equitable terms then to be prescribed; but if no such order shall then be made all such bondholders shall be confined to sharing the proceeds of the sale *pro rata*, as hereinbefore provided.

And it is further ordered that the said master do give notice in one newspaper published in each of the cities of Amsterdam and Rotterdam, in the Kingdom of The Netherlands, a notice of the time, place, and terms of said sale, of the application to be made of the purchase-money, and of the reservation herein made in favor of outstanding bondholders.

COMPLAINANT'S EXHIBIT "H."

Master's Report of Sale of St. Paul & Pacific Extension Lines.

And afterwards, to wit, on the twenty-first day of June, A. D. 1879, came Horatio E. Mann, Esq., a master in chancery of this court, and filed his report of sale in the words and figures following, to wit:

1158 United States Circuit Court, District of Minnesota. In Equity.

JACOB S. WETMORE, THOMAS W. PEARSALL, and THOMAS DENNY, as Trustees, etc.,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, THE FIRST DIVISION of the St. Paul & Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and Charles A. F. Morris.

To the honorable the judges of the United States circuit court for the district of Minnesota:

The undersigned, a master in chancery of said court, would respectfully report that, pursuant to the final decree of said court, sitting in equity, made and entered in the above-entitled cause on the eleventh day of April, A. D. 1879, and at the general December term thereof, which was then in session, a copy whereof is hereto attached, and to which, for greater certainty, he begs leave to refer, he advertised the property and premises mentioned and described in said decree, and which was therein adjudged and decreed to be sold by him or under his direction, for sale by him at the eastern front door of the United States custom-house building, where
1159 the said court holds its session, in the city of St. Paul, in said district, on the fourteenth day of June, A. D. 1879, at eleven o'clock in the forenoon, by causing a notice of said sale and the time and place thereof to be published in the "Daily Globe," a daily newspaper printed and published in the said city of St. Paul, once a week, for six successive weeks prior to the day of sale, which notice was in the words and figures following:

Notice of Foreclosure Sale.

Pursuant to the decree of the circuit court of the United States for the district of Minnesota, sitting in equity, made and entered in a certain cause pending in said court, wherein Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, as trustees, are complainants, and The Saint Paul & Pacific Railroad Company, The First Division of the Saint Paul and Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and Charles A. F. Morris are defendants, on the eleventh day of April, A. D. 1879, at a general term of said court commencing on the ninth day of December, 1878, the undersigned, a master in chancery of the said circuit court, will sell at public vendue to the highest bidder—but not for less than $1,500,000, $50,000 of which must be paid at the time of the sale, and the balance of the purchase-money within fifteen days thereafter—on the fourteenth day of June, 1879, at eleven o'clock in the forenoon of that day, at the eastern front door of the United States custom-house building, where the said court holds its sessions, in the city of St. Paul and district of Minnesota aforesaid, all and singular the following property, to

wit, all and singular the line of railroad of the said cor-
1160 poration, the Saint Paul & Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Kittson and State of Minnesota; and also all and singular the line of railroad which said defendant corporation, The Saint Paul & Pacific Railroad Company, was authorized to construct from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific at said town, as contemplated by the act of Congress approved March 3, 1871, in the complaint named, together with the equipments of the said railroads respectively, and the rights, privileges, and corporate or other franchises thereunto respectively belonging or in anywise appertaining or which shall or may at any time hereafter thereunto belong or in anywise appertain; and also all right, title, and interest which said defendant, The Saint Paul & Pacific Railroad Company, now has or that it or its successors or assigns may at any time hereafter acquire by reason of the construction of said railroads or of either or any part of either thereof, or otherwise, in, to or concerning the lands situate, lying, and being in the State of Minnesota, which are embraced or intended to be embraced in the grants or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of said Congress approved March 3, 1857, October 1, 1865, and March 3, 1871, respectively, in the bill of complaint in said cause named, and which has been granted by said State to said last-named railroad company, or which shall or may be granted or conveyed to it, its successors or assigns, to aid in the con-
1161 struction of the said lines of railroad or of either or of any part of either thereof; and all and singular the road-beds of the said railroads respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops and other shops, and all other structures, buildings, and materials whatsoever placed or to be placed on the said railroads respectively or on either or any part of either thereof, or acquired or to be acquired for the use of the same; and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools, and implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of said railroads or of either or any part of either thereof now held by the said defendant corporations, The Saint Paul & Pacific Railroad Company and the First Division of the Saint Paul & Pacific Railroad Company or either of them, or hereafter to be acquired by the said corporations or either of them, or by their successors or assigns or either of them, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in

law as in equity, of the said defendant corporations and of each of them in, to, and concerning the same and each and every part and parcel thereof, with the appurtenances; all of which property, rights, privileges, immunities, franchises, lands, and railroad will be sold together as one property at the time and place aforesaid, and
1162 subject to the terms, conditions, provisions, savings, and exceptions in the said decree specified and mentioned, to which, for greater certainty, reference is hereby made.

HORATIO E. MANN,
Master in Chancery.

GEO. L. & CHAS. E. OTIS,
Solicitors for Complainants.

That he also caused notice of the time and place of said sale, of the application to be made of the purchase-money, and of the reservation made in said decree in favor of outstanding bondholders to be published in the "Nieuwe Amsterdamsche Courant," a daily newspaper printed and published in the city of Amsterdam, in the Kingdom of the Netherlands, and also in the "Nieuwe Rotterdam Courant," a daily newspaper printed and published in the city of Rotterdam, in said kingdom; that the following are the printed notices as they appeared in said newspapers:

(Here follows the printed notices in Dutch papers above referred to, with an English translation.)

That at the time and place specified in said notices, to wit, on the fourteenth day of June, A. D. 1879, at eleven o'clock in the forenoon of that day, at the eastern front door of the United States custom-house building, in the city of Saint Paul, he attended and publicly offered for sale to the highest bidder all and singular the line of railroad of the said corporation, the Saint Paul & Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Kittson and State of Minnesota, and also all and singular the line of railroad which said defendant corporation, The Saint
1163 Paul & Pacific Railroad Company, was authorized to construct in said State from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town, as contemplated by the act of Congress approved March 3, 1871, in the bill of complaint in said suit named, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges, and corporate and other franchises thereunto respectively belonging or in anywise appertaining or which shall or may at any time hereafter thereunto belong or in anywise appertain; and also all right, title, and interest which said defendant, The Saint Paul & Pacific Railroad Company, has now or hath heretofore had or that it or its successors or assigns may at any time hereafter acquire by reason of the construction of said railroads or of either or any part of either thereof or otherwise in, to, or concerning the lands situate, lying, and being in the State of Minnesota,

which are embraced or intended to be embraced in the grants or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of said Congress approved March 3, 1857, March 3, 1865, and March 3, 1871, respectively, in the bill of complaint in said cause named, and which has been granted by said State to said last-named railroad company or which shall or may be granted or conveyed to it, its successors or assigns, to aid in the construction of the said lines of railroad or of either or any part of either thereof, and all and singular the road-beds of the said railroads respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-
1164 houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings, and material whatsoever placed or to be placed on the said railroads respectively or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools and implements, fuel and materials for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of said railroads or of either or any part of either thereof now held by the said defendant corporations, The Saint Paul & Pacific Railroad Company and The First Division of the Saint Paul & Pacific Railroad Company, or either of them, or hereafter to be acquired by the said corporations or either of them, or by their successors or assigns or the successors and assigns of either of them, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said defendant corporations and each of them in, to, and concerning the same and each and every part and parcel thereof, with the appurtenances, subject, however, to all the terms, conditions, provisions, savings, and exceptions in said decree specified and mentioned; to which said decree the attention of all persons present at said sale was especially called at the time of said offer.

That said property and premises so offered for sale as afore-
1165 said were then and there struck off and sold as one entire property to the Saint Paul, Minneapolis & Manitoba Railway Company, a corporation duly constituted and organized under the laws of the State of Minnesota, for the sum of one million six hundred thousand dollars ($1,600,000), it being the highest and best bidder and that being the highest sum bid therefor; that said purchaser has paid to him the purchase price as follows, viz:

(Here follows a statement in detail of the cash, debentures, bonds, etc., used in payment, the disposition made and to be made thereof.)

The undersigned would further report that he has prepared and herewith submits to the court for its approval a certificate or conveyance of the property and franchises so sold as aforesaid, and

which he is now ready to execute and deliver to said purchaser pursuant to said decree.

That said notices were given and published and said sale made in all respects pursuant to the rules and practice of said court and in accordance with the provisions and requirements of said decree.

HORATIO E. MANN,
Master in Chancery.

Saint Paul, June 21, 1879.

1166 COMPLAINANT'S EXHIBIT "I 1."

Form of Certificate Referred to in Master's Report of Sale.

Whereas in and by a certain decree made and entered on the eleventh day of April, 1879, in a certain suit pending in the circuit court of the United States for the district of Minnesota, sitting in equity, wherein Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, as trustees, are complainants, and The Saint Paul & Pacific Railroad Company, The First Division of The Saint Paul & Pacific Railroad Company, George L. Becker, Horace Thompson, William G. Moorhead, and Charles A. F. Morris are defendants, which said suit was brought to foreclose a certain mortgage or deed of trust bearing date the first day of April, A. D. 1871, executed by said defendant corporation, The Saint Paul & Pacific Railroad Company, to the defendants, Horace Thompson, William G. Moorhead, and George L. Becker, as trustees, upon all and singular certain property, premises, rights, immunities, and franchises in said decree specified and hereinafter described, to secure certain mortgage bonds issued and negotiated by said defendant, The First Division of The Saint Paul & Pacific Railroad Company, bearing even date with said mortgage or deed of trust, to the aggregate amount of fifteen millions of dollars, as found and adjudged in said decree, and for a more full description of which said mortgage or deed of trust reference is hereby made to said decree and to the bill of complaint in said suit,

1167 it was, among other things, adjudged and decreed that all and singular the said property, premises, rights, immunities, and franchises so described in and covered by the said mortgage or deed of trust be sold at public auction by or under the direction of the undersigned, H. E. Mann, one of the masters of said court, at the eastern front door of the United States custom-house building, where said court holds its sessions, in the city of St. Paul and district of Minnesota aforesaid;

That the same be sold in one parcel and as one entire property to the highest and best bidder (but not for less than one million five hundred thousand dollars); that the said master give public notice of the time and place of such sale according to law and the course and practice of said court, and make report thereof to the court, and that upon the payment of the purchase-money as in said decree provided and the confirmation of such sale by the court the said master should execute and deliver a certificate or deed of conveyance of the premises to the purchaser or purchasers thereof;

And whereas pursuant to the said decree I, as such master, did give due and legal public notice of the sale of said premises, as provided in said decree, by causing a notice containing the specifications required by law and setting forth the terms and conditions of sale embodied in said decree and the savings and exceptions therein provided, and stating that the said premises would be sold at public auction to the highest and best bidder at the eastern front door of the United States custom-house building, where the said court holds its sessions, in the city of St. Paul and district of Minnesota afore-
1168 said, on the fourteenth day of June, 1871, at eleven o'clock in the forenoon of that day, by me as such master, to be published once in each week for six weeks successively prior to the time in said notice named for such sale in a newspaper printed and published in the city of St. Paul, in said district, called the "Daily Globe;"

And whereas I, as said master, did also give notice in one newspaper published in each of the cities of Amsterdam and Rotterdam, in the Kingdom of the Netherlands, of the time, place, and terms of said sale, of the application to be made of the purchase-money, and of the reservation in said decree made in favor of outstanding bondholders, as in said decree provided;

And whereas all and singular the said property and premises so advertised for sale and hereinafter specifically described were, pursuant to said notice and at the time and place therein specified, to wit, on the fourteenth day of June, 1879, at eleven o'clock in the forenoon, at the eastern front door of the United States custom-house building, where the said court holds its sessions, in the city of St. Paul and district of Minnesota aforesaid, by me duly struck off and sold as one entire property and in one parcel to "the St. Paul, Minneapolis & Manitoba Railway Company," a corporation duly constituted and organized under the laws of the State of Minnesota, for the sum of one million six hundred thousand dollars, the said corporation being the highest and best bidder therefor and that being the highest sum bidden for the same;

To all of which facts and matters hereinbefore recited I do hereby certify;

And whereas I have duly made my report of said sale and
1169 of all proceedings thereon to said court, as required by said decree, and my said report has been in all things duly confirmed by the court, whereby the said purchaser has become entitled to a proper certificate of sale or conveyance of the property and premises as in said judgment and decree provided:

Now, therefore, these presents witness that I, the said Horatio E. Mann, master in chancery as aforesaid, by virtue of the power and authority in me vested as such master and pursuant to said decree, in consideration of the premises hereinbefore recited and of the said sum of one million six hundred thousand dollars to me in hand paid by the said The Saint Paul, Minneapolis & Manitoba Railway Company, the receipt whereof is hereby acknowledged, have struck off and sold as aforesaid and do hereby grant and convey unto the said The St. Paul, Minneapolis & Manitoba Railway Company and to

its successors and assigns forever all and singular the said property and franchises so struck off and sold as aforesaid to the said last-named corporation, to wit, all and singular the line of railroad of the said corporation, the Saint Paul & Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of St. Vincent, in the county of Kittson and State of Minnesota, and also all and singular the line of railroad which said defendant corporation, The Saint Paul & Pacific Railroad Company, was authoried to construct in said State from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town,

1170 as contemplated by the act of Congress approved March 3, 1871, in the bill of complaint in said suit named, together with the equipments and appurtenances of the said railroads respectively and the rights, privileges, and corporate and other franchises thereunto respectively belonging or in anywise appertaining, or which shall or may at any time hereafter thereunto belong or in anywise appertain, and also all right, title, and interest which said defendant, The Saint Paul & Pacific Railroad Company, has now or hath heretofore had or that it or its successors or assigns may at any time hereafter acquire by reason of the construction of said railroads or of either or any part of either thereof or otherwise in, to, or concerning the lands situate, lying, and being in the State of Minnesota which are embraced or intended to be embraced in the grants or either of them made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of said Congress approved March 3, 1857, March 3, 1865, and March 3, 1871, respectively, in the bill of complaint in said cause named, and which has been granted by said State to said last-named railroad company, or which shall or may be granted or conveyed to it, its successors or assigns, to aid in the construction of the said lines of railroad or of either or of any part of either thereof, and all and singular the road-beds of the said railroads respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings, and materials whatsoever placed or to be placed on the said railroads respectively or on either or any part of either thereof,

1171 or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling-stock whatsoever, and all machinery, tools and implements, fuel and materials for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of said railroads or of either or of any part of either thereof, now held by the said defendant corporations, The Saint Paul & Pacific Railroad Company and The First Division of the Saint Paul & Pacific Railroad Company, or either of them, or hereafter to be acquired by the said corporations or either of them, or by their successors or assigns or the successors or assigns of either of them,

together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, *right*, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said defendant corporations and of each of them in, to, and concerning the same and each and every part and parcel thereof, with the appurtenances, subject, however, to the terms, conditions, provisions, savings, and exceptions in the said decree specified and mentioned, to which, for greater certainty, reference is hereby made:

To have and to hold the above-granted premises, with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, unto the said "The Saint Paul, Minneapolis & Manitoba Railroad Company," its successors and assigns forever.

In testimony whereof and as such master I have hereto
1172 set my hand and affixed my seal this twenty-first day of June, A. D. 1879.

HORATIO E. MANN. [SEAL]

Signed, sealed, and delivered in presence of—
GEO. L. OTIS.
O. J. REYNOLDS.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it remembered that on this twenty-first day of June, A. D. 1879, before me personally came H. E. Mann, to me known to be the person described in and who executed the foregoing instrument, and he acknowledged that he executed the same in his official capacity as master in chancery, as therein described and for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed the seal of my office the day and year above named.

[NOTARIAL SEAL.] I. N. CARDOZO,
Notary Public, Minn.

1173 COMPLAINANT'S EXHIBIT "K 1."

United States Circuit Court for the District of Minnesota.

Term Minutes.

June Term, A. D. 1879, June 21, 1879.

JACOB S. WETMORE, THOMAS W. PEARSALL, and THOMAS DENNY, Trustees,
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY, HORACE Thompson, George L. Becker, William G. Moorhead, The First Division of the Saint Paul & Pacific Railroad Company, Charles A. De Graff, William Crooks, and Charles A. F. Morris.

On reading and filing the master's report of foreclosure sale in the

above-entitled cause, and on motion of Geo. L. & Chas. E. Otis, solicitors for said complainants, the defendants, The First Division of the Saint Paul & Pacific Railroad Company, Geo. L. Becker, and Chas. A. F. Morris, appearing by their solicitors, Messrs. Bigelow, Flandrau & Clark, and consenting to this order, and the de-
1174 fendant, The Saint Paul & Pacific Railroad Company, appearing by Gen. John B. Sanborn, and also consenting to this order—

It is hereby ordered:

First. That the said report and the said foreclosure sale and all proceedings thereon be, and the same are hereby, in all things confirmed.

Second. That the said master forthwith execute and deliver to the purchaser at said sale the certificate or conveyance submitted to the court with his said report, as in said decree it is provided, the form of which said certificate is hereby approved by the court.

Third. That the mortgage bonds and coupons used in the payment of purchase-money on said sale and brought into court by said master, as stated in his said report, and which said bonds and coupons are now deposited in court, as provided in said decree, be stamped or endorsed with proper words to denote the fact that they have been so used in payment, and to show the dividend allowed thereon, as in said decree provided; and to that end the said H. E. Mann, master as aforesaid, is hereby ordered and directed to so stamp and endorse said bonds and coupons with all convenient speed. Before proceeding to the discharge of this duty, however, the said master will get the further direction of the court as to the form of the endorsement so to be stamped on such bonds and coupons; and it is further ordered that the said master, having performed this duty, make due report thereof to the court that such further order or direction may be made as to the custody or other disposition of said bonds and coupons as may seem meet and proper.

1175 That all and singular the debentures so used on said sale and brought into court by said master, as stated in his said report, be also stamped and indorsed by said master with proper words to denote that the same are paid and cancelled.

Fourth. That the sum of sixty thousand four hundred and thirteen and $\frac{10}{100}$ths dollars, allowed to complainants as compensation to trustees and for counsel fees and other expenses of the court, be paid to said complainants or to their agents, Messrs. J. S. Kennedy & Co., out of the funds so deposited to the credit of this action, and to that end the clerk will draw upon said fund to the order of said complainants or of their said agents for said amount.

Fifth. Out of the moneys so deposited in the registry of the court to the credit of this action the said master shall pay upon presentation the receiver's debentures yet outstanding and unpaid, amounting to twenty-one hundred dollars, as appears from the said master's report of sale, with interest thereon to June 21, 1879, the date of this order, and upon such payment the same shall be cancelled by said master.

The said master shall also pay out of the said moneys so deposited the same dividend as that allowed by said master upon the bonds and coupons so used on said sale, to wit, a dividend of .030285 per centum upon all the bonds and coupons of said fifteen-million issue other than those so used on said sale now outstanding and unpaid, allowing interest thereon to April 11, 1879, the date of said decree, such dividend to be paid upon the presentation of any such bond and coupon; and the said master shall stamp every such
1176 bond and coupon with proper words to denote the fact of such payment, the form of such endorsement to be fixed by the court or one of the judges thereof.

This order is made by and upon the consent and at the request of the trustees, the complainants, and upon the consent of the parties defendants, as shown above, and the right to make any further orders is reserved.

JOHN F. DILLON,
R. R. NELSON, *Judges.*

COMPLAINANT'S EXHIBIT "L 1."

Special Laws of Minnesota, 1881.

Chapter 412.

An act confirming the organization and certain purchases of the Saint Paul, Minneapolis & Manitoba Railway Company and in relation to the charter, powers, franchises, and property of said company.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That the purchases made by the Saint Paul, Minneapolis & Manitoba Railway Company and hereinafter in this section mentioned, as evidenced by the several instruments of conveyance and transfer duly entered and now remaining of record in the office of the secretary of state of this State, to wit:

1177 First. The purchase so made of the Red River & Manitoba Railroad Company of the line of railroad extending from Breckenridge to Barnesville, in this State.

Second. The purchase so made of the Red River Valley Railroad Company of the line of railroad extending from Crookston, in this State, to Grand Forks, on the Red River of the North.

Third. The purchase so made of the Saint Cloud and Lake Traverse Railway Company of the line of railway extending from Morris, in this State, to the western boundary of this State, at Brown's Valley.

Fourth. The purchase so made of the Barnesville & Moorhead Railway Company of the line of railroad extending from Barnesville to Moorhead, in this State.

Fifth. The several purchases so made of the main and branch lines (so called) formerly owned by the First Division of the Saint Paul & Pacific Railroad Company and of the extension line (so

called), extending from East Saint Cloud to Saint Vincent and the international boundary line, formerly owned by the Saint Paul & Pacific Railroad Company, with the equipments, land grants, lands, property, benefits, privileges, immunities, and corporate and other franchises and powers pertaining to said main, branch, and extension lines respectively—

Be, and they, as well as the said several instruments of conveyance and transfer and the organization of said The Saint
1178 Paul, Minneapolis & Manitoba Railway Company, are fully ratified and confirmed; and the Saint Paul, Minneapolis & Manitoba Railway Company in the use and enjoyment and in the management, operation, and conduct of the business of said main and branch lines and the land grants and lands appertaining thereto, and of said lines from Breckenridge to Barnesville and from Morris to Brown's Valley, shall have, possess, enjoy, and exercise, and is hereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the First Division of the Saint Paul & Pacific Railroad Company with respect to said main and branch lines; and in the use and enjoyment and in the management, operation, and conduct of the business of said extension line and the lands and land grants appertaining thereto, and of said lines from Barnesville to Moorhead and from Crookston to Grand Forks, shall have, possess, enjoy, and exercise, and is hereby declared to be vested with, the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the Saint Paul & Pacific Railroad Company with respect to said extension line:

Provided, That the powers, immunities, and privileges of the parts of lines above named which were organized and constructed under the provisions of the general laws of this State shall not be hereby enlarged or increased.

SEC. 2. Any of said instruments of conveyance and transfer may be proved by the record thereof aforesaid or by a duly certified copy of such record, as well as by the production of the instrument itself, and this act shall be legal evidence of the corporate charac-
1179 ter and powers of said The Saint Paul, Minneapolis & Manitoba Railway Company in all courts and places whatsoever.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 7, 1881.

COMPLAINANT'S EXHIBIT "M 1."

1. *Order of May* 31, 1878, *for Completing the St. Vincent Extension by the Receiver and Issuing Debentures;* 2. *Order of December* 20, 1878, *for Issuing Debentures.*

In the Circuit Court of the United States for the District of Minnesota.

JOHN S. KENNEDY and Others
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, THE NORTHERN PACIFIC RAILROAD COMPANY, *et al.*

This cause having come on to be heard on the eighteenth
1180 day of April, A. D. 1878, at Jefferson City, in the State of Missouri, on the application of J. P. Farley, Esq., receiver of the defendant, The Saint Paul & Pacific Railroad Company, to be authorized to issue the debentures of said company for the purpose of constructing the uncompleted portions of said railroad, and to sell lands pertaining to the completed portions thereof; and the court, for the purpose of fully advising itself in the premises, having then appointed a commission of examination to report all the facts necessary to enable the court to judge of such application, and said commission having so reported, and the court being fully advised in the premises—

It is hereby ordered that the order heretofore made in this cause on the first day of August, A. D. 1873, appointing a receiver for said company and authorizing him, among other things, to issue certain debentures, as modified by an order made herein on the first day of September, A. D. 1873, be further modified and supplemented as follows:

I. Said receiver shall issue no debentures in addition to those already issued, except as hereinafter provided, and only when specially ordered by the court to do so; but those already issued shall continue to have the liens and preferences heretofore secured to them by the orders of this court.

II. Whereas George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill represent and show to the court that they are the equitable owners of $11,400,000 of the $15,000,000 issue of bonds secured by the extension mortgage of April 11, 1871, as shown and
set forth in an agreement between them, as parties of the
1181 first part, and Chemet & Weetjen, Kirkhoven & Co., Lippmann, Rosenthal & Co., Wurfbain & Son, Tutein, Nolthenius & De Hann, H. C. Voorhoeve & Co., and Johan Carp, the committee of the Dutch bondholders of the Saint Paul & Pacific Railroad Company, parties of the second part, being an agreement of 27 articles, dated March 13, 1878, and which said $11,400,000 of bonds are held by John S. Kennedy & Co. (the plaintiffs herein), as trustees, as shown in said agreement; and whereas the said Stephen,

Smith, Kittson, and Hill propose to advance and furnish or cause to be advanced and furnished the full sum necessary to complete and equip the said extension lines to St. Vincent and from Melrose at least to Fergus Falls, as required by the act of the Legislature of the State of Minnesota approved March 9, 1878, in time to save the forfeiture therein provided for and to secure the land grant to the company if the court will in this cause authorize the receiver to construct and equip the said extension lines on such terms and on the security of such liens as will be equitable to themselves and as between themselves and other bondholders and all others concerned in the property and the said mortgage; and whereas it appears that no foreclosure of said mortgage can be had in time to prevent the forfeitures provided for in said act of the Legislature of the State of Minnesota, and that if the said forfeitures are made the security of the said mortgage will be, as to the unfinished lines, wholly destroyed; and whereas the orders hereinafter made are based upon the fundamental consideration and condition that money enough shall be advanced to the receiver to fully build and equip the said extension lines as aforesaid;

1182 And whereas the court has refused to issue debentures as a means of credit in advance of actual construction, or to allow the receiver to incur any indebtedness on his part as receiver beyond the money actually advanced:

Now, the said receiver, out of the moneys so to be furnished him and not otherwise, is hereby authorized to proceed to construct and equip the said extension lines at the lowest possible expense and cost in cash, of which he shall keep an exact and minute account and make monthly reports to the court, and in no event to exceed the rate of ten thousand dollars per mile for such construction, including necessary sidings, station buildings, water-tanks, etc., and a sufficient equipment for the business of said lines.

When the said extension lines are fully completed in such manner as to secure and receive the land grant, and equipped for business and ready to run, the receiver will be authorized to issue in such form as the court shall then direct debentures for the actual sum of money so advanced to him by the said Stephen, Smith, Kittson, and Hill, payable in gold coin of the present standard of weight and fineness established by law, with interest at the rate of eight per cent. per annum, which debentures shall include interest at said rate on all sums so advanced to the receiver from the date of such advances, and which debentures shall be a first lien on all the lines of road not now completed and on all the lands which such completion shall be the means of earning and acquiring, but not a lien on the lines of road already completed or on the lands already earned, unless the court shall then so order and adjudge; and the right and power are hereby reserved to extend the lien of the

1183 said debentures over the lines already completed and to the lands already earned and acquired and now owned by the company, if to the court it shall appear, upon the completion of the said extension lines to St. Vincent and to Fergus Falls, that such extension of the lien of such debentures is just and equitable.

Notwithstanding the foregoing order in respect of debentures and the lien thereof, on the completion of the road in running order to St. Vincent and as far as Alexandria, the court reserves the right to issue debentures for the cost of such completion, and will issue the same if the said committee of Dutch bondholders shall consent thereto, and if no good reason shall be shown or exist for not then issuing such debentures.

III. Any bondholder under the $15,000,000 mortgage aforesaid is hereby accorded the right at any time before the issue of debentures, and, if the court shall think just, at any time before the sale of the property under the decree of foreclosure, to pay his *pro rata* share of the necessary cost of the construction and equipment of the road under this order, and on placing himself in this regard upon the same footing as the said Stephen, Smith, Kittson, and Hill shall be entitled to have equal rights with them in respect of said debentures and the lien thereof, and power to make provisions in detail to secure this right is hereby reserved.

IV. It is expressly ordered that the receiver shall contract no debt under this order in excess of money actually received by him.

Subject to this provision, the receiver is authorized to pur-
1184 chase all necessary material, to employ all necessary agents and servants, and to make all contracts necessary for the purposes aforesaid; but no contractor under or other creditor of the receiver shall have any lien for work or materials furnished the receiver under any lien law of the State of Minnesota or otherwise.

V. The said Stephen, Smith, Kittson, and Hill shall jointly and severally execute an instrument approving of this order and agreeing to furnish all the money herein contemplated, which shall stand as a security to any contractor or laborer under the receiver who shall or may be injured by their failure to comply herewith, and agreeing to procure within sixty days the formal and duly authenticated assent of the said Dutch committee to this order, and the said instrument shall be filed in this cause.

VI. The receiver shall cause all inspections and other proceedings to be had necessary to be taken to secure the acceptance of said roads by the State of Minnesota as constructed in compliance with the acts of Congress and of said State, and to secure the conveyance to said company of the lands pertaining to such extension lines.

VII. Before this order shall take effect there shall be filed in this court the duly authenticated assent to its provisions of the new trustees of said $15,000,000 mortgage and of John S. Kennedy and John S. Barnes, the trustees named in said agreement between said Stephen, Smith, Kittson, and Hill and said Dutch committee, and the approval in writing of the terms hereof by Messrs. John
1185 B. Henderson and T. C. Reynolds, the commission appointed by said order of April 18, 1878.

VIII. And it is further ordered that the said Kennedy and Barnes, the plaintiffs herein and trustees as aforesaid, shall not part with the possession of said $11,400,000 of bonds or any of them without the special order of the court, and that a copy of this order be served on the Mercantile Safe Deposit Company, in the city of New

York, and proof of service by some disinterested person shall be filed in this cause.

IX. It is further ordered that the application of the receiver for leave to sell lands be continued for further consideration, and the power is reserved to modify the provisions of this order and to make further orders from time to time.

The clerk is ordered to make a complete record of the petition of the receiver, the order to show cause thereon, the order of April 18, 1878, and the separate and joint reports of the commissioners named therein (except the map appended to the report of Mr. Reynolds and the copy of the act of the Legislature of March 9, 1878) and of this order.

Thus made and ordered this thirty-first day of May, A. D. 1878.

JOHN F. DILLON, *Judge.*

1186 (2.)

Order of December 20, 1878, *for Issuing Debentures.*

At a stated term of the circuit court of the United States held within and for the district of Minnesota, at the city of St. Paul, on the twentieth day of December, A. D. 1878.

Present: Hon. John F. Dillon, circuit judge, and Hon. R. R. Nelson, district judge.

JOHN S. KENNEDY *et al.*
vs.
THE SAINT PAUL & PACIFIC RAILROAD COMPANY *et al.* } In Equity.

The receiver herein having made and filed his report of his proceedings under the order of May 31, 1878, in the construction of the unfinished lines of the St. Paul & Pacific railroad, and the petition of George Stephen and his associates named in said order having been made and presented to the court praying for the issue of debentures, as in said order provided, and the matter stated in said report having been referred to H. E. Mann, Esq., as special master to examine and inquire into the same and report the result
1187 of such inquiry and examination to the court, and the said master having filed his original and supplemental report thereon, and due notice having been given to all parties interested of the hearing before said master and before the court, and all the assents and agreements required by said order of May 31, 1878, having been duly filed;

And it appearing to the court from the said report of the receiver and the petition, the certificate of the Governor of Minnesota, and the reports of the said master and evidence returned therewith that the lines of railroad of said company from Melrose to Alexandria and from Crookston to St. Vincent and the international boundary line at Emerson have been fully completed in accordance with the terms of said order and have been accepted by the Governor of the State of Minnesota as completed in compliance with the terms of

the legislation of Congress and of said State granting lands to aid in the construction thereof;

And it being further represented that said lines have been constructed at the aggregate price of $1,016,300, and the actual cost of said roads not having yet been fully ascertained;

And the petitioners having filed the duly authenticated assent of the Dutch committee named in said order and of the new trustees in the $15,000,000 mortgage aforesaid and of John S. Kennedy and John S. Barnes, trustees named in the agreement between said Stephen, Smith, Kittson, and Hill and the said Dutch committee to the issue of debentures, as prayed in said petition, and the defendant, The Northern Pacific Railroad Company, and the defendant, The St. Paul & Pacific Railroad Company, having consented in open court to the granting of said petition, and after hearing
1188 George B. Young, Esq., counsel for the petitioners, in support of the said petition and H. R. Bigelow, Esq., counsel for the defendant, The First Division of the St. Paul & Pacific Railroad Company, in opposition thereto, and none of the other defendants having appeared to oppose said petition—

It is ordered that Jesse P. Farley, Esq., the receiver herein, be, and he is hereby, authorized and directed to issue to said petitioners his debentures in sums of not less than one thousand dollars each to the amount of eight hundred thousand dollars.

And it is further ordered that the debentures to be issued under this order shall be a first lien in preference to the mortgage of April 1, 1871, and subject only to the debentures now outstanding of the issue of $100,000 heretofore made by the receiver under the orders made herein on August 1, 1873, and September 1, 1873, on all and singular the parts and portions of the lines of the road of the Saint Paul & Pacific Railroad Company repaired, built, and completed under and by virtue of the said order of May 31, 1878, extending from Melrose to Alexandria and from Crookston to St. Vincent and Emerson, on the international line—in all, 125 miles—and on all the lands granted by the United States and the State of Minnesota appertaining to the said road between Melrose and Alexandria and between Crookston and the international line which the road so repaired, built, and completed under the said order of May 31, 1878, was the means of earning and acquiring, but not a lien on such portions of the road as were fully completed before the said order of May 31, 1878, was made nor upon lands which were fully
1189 earned before said thirty-first day of May, 1878, unless the court on the final decree shall otherwise order and adjudge, the intent hereof being that the lien of said debentures shall not be less than as above prescribed, but such lien may be extended when the final decree is rendered, if such extension of the lien shall then be found to be just and equitable.

The debentures so to be issued shall bear date December 2, 1878, and shall be payable on or before three years from said date, at the option of the receiver, and shall bear interest at the rate of 8 per cent. per annum, payable semi-annually on the first days of June and December in each year at the American Exchange National

Bank, in the city of New York, according to the terms of interest coupons to be thereto annexed and signed by the receiver. Both principal and interest shall be payable in the gold coin of the United States of the present standard of weight and fineness; and the earnings of said railroad, after deducting taxes, the operating expenses, and necessary repairs and the expenses of the receivership, and after making due provision for such prior debentures, are pledged to the payment of such principal and interest.

Such debentures shall be attested by the seal of the court, shall be signed by the receiver and countersigned and registered by the clerk of the court, and shall be in form following:

No. —. $—.

SAINT PAUL, MINN., *December* 2, 1878.

Three years after date, unless sooner paid, as receiver of the St. Paul & Pacific railroad, I promise to pay to George
1190 Stephen or his assigns the sum of — dollars in gold, with interest at the rate of eight per cent. per annum, according to the tenor of coupons hereto annexed, at the American Exchange National Bank, in the city of New York. Failure to pay interest for six months will make the principal due at the option of the holder, if the court shall so order.

This obligation is issued under and pursuant to an order of the circuit court of the United States for the district of Minnesota endorsed hereon, and is not valid unless countersigned by the clerk of said court and sealed with the seal thereof.

——— ———, *Register.*

[SEAL OF COURT.] Countersigned:

——— ———, *Clerk.*

It is further ordered that when the receiver shall have reported to the court a statement in detail of the actual cost of the said lines under the order of May 31, 1878, the petitioners may apply to the court for additional like debentures to such an amount as to the court shall seem just, not exceeding in all the sum claimed, viz., $1,016,300, and upon the making of such application the same shall be referred to H. E. Mann, Esq., master, who shall, at such times and places as he may appoint, hear the evidence that may be adduced by any party in support of or in opposition to such application, and shall report the evidence so taken and his findings thereon to the court.

And it is further ordered that the said petitioners shall give to the defendant, The First Division of the Saint Paul & Pacific
1191 Railroad Company, such notice of the hearing before said master as shall by him be directed and eight days' notice of the hearing before the court on the coming in of the master's report.

The court reserves the right to make further orders from time to time, and, if deemed just and equitable, to make orders to carry

into effect article (3) of the order of May 31, 1878, and the other articles of said order.

It is further ordered that the said Kennedy and Barnes, the plaintiffs herein and trustees as aforesaid, shall not part with the possession of said $11,400,000 of bonds or any of them without the special order of the court, and that a copy of this order be served on the Mercantile Safe Deposit Company, in the city of New York, and proof of service by some disinterested person shall be filed in this cause.

JOHN F. DILLON,
R. R. NELSON, *Judges.*

1192 COMPLAINANT'S EXHIBIT "N 1."

1. *Petition of the St. Paul, Minneapolis & Manitoba R'y Co. to be Made a Party Defendant in the Suit of The Northern Pacific R. R. Co. vs. The St. Paul & Pacific R. R. Co. et al.*
2. *Order of this Court on said Petition, Made May* 3, 1884.

Circuit Court of the United States for the District of Minnesota. In Equity.

THE NORTHERN PACIFIC RAILROAD COMPANY, Complainant,
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, Thomas Denny, and Thomas W. Pearsall, Trustees, and Jesse P. Farley Receiver, Defendants.

To the honorable the judges of the United States circuit court for the district of Minnesota:

The petition of the St. Paul, Minneapolis & Manitoba Railway Company respectfully shows—

1193 That your petitioner is a corporation created and existing, for railway purposes under and by virtue of the laws of the State of Minnesota and is a citizen of said State; that the bill of complaint herein was taken as confessed as against the defendant, The St. Paul & Pacific Railroad Company, and that the said defendants, Wetmore, Denny, and Pearsall, and Jesse P. Farley, as receiver, answered said bill August 10, A. D. 1875, and to said answer a replication was filed on the fourth day of October, A. D. 1875; that proofs have been taken by and on behalf of said complainant and on behalf of said defendants, and the time for taking proofs herein has expired; that thereafter and on or about the eighth day of October, A. D. 1883, the defendant, Jesse P. Farley, settled his account as receiver and was discharged from said trust by an order duly made in the suit in this court, in which he was appointed, mentioned in said answer herein, and that his functions and duties as such receiver have been terminated.

And your petitioner further shows that the said Wetmore, Denny, and Pearsall, as trustees by substitution in the place of Becker, Thompson, and Moorhead, original trustees, after the filing of said

answer and on or about the twenty-seventh day of December, A. D. 1875, commenced a suit in said court on the equity side thereof against the St. Paul & Pacific Railroad Company, the First Division of the St. Paul & Pacific Railroad Company, and others for the foreclosure of the trust deed or mortgage mentioned in the answer in this cause for $15,000,000 upon the property in said answer described and set forth, which suit was for a long time vigorously defended; that under the legislation of the State
1194 of Minnesota the line of road known as the St. Vincent Branch or Extension was required to be built within a short, limited time, on penalty of forfeiting the lands granted as stated in said answer for building it and the franchises of the St. Paul & Pacific Railroad Company, and in order to save said grant and franchises this court, upon the consent of said trustees and the committee of the bondholders under said mortgage, authorized said Farley, as such receiver, to complete said road, which he did prior to November, A. D. 1878, to the satisfaction and approval of said State and of the United States, with money furnished by a so-called syndicate of bondholders, representing $11,400,000 of said bonds, upon debentures ordered to be issued by this court to the amount of $800,000; that such proceedings were thereupon afterwards had in said court in said foreclosure suit that during the December term of said court, to wit, on the eleventh day of April, A. D. 1879, a final decree of foreclosure was duly made and rendered therein adjudging, among other things, that there was then due and unpaid on said $15,000,000 trust deed or mortgage the said principal sum of $15,000,000, with interest thereon from the first day of July, A. D. 1874, and that there was then due upon debentures theretofore issued under the order of the court the sum of $890,000 in all; that said sum first named was a lien upon the said mortgaged property and franchises, as stated in said decree, and said sum last named was a lien paramount to all others upon said line of railroad from Crookston to St. Vincent and the international boundary at Emerson and the said line from Melrose to Alexandria and the appurtenances of said lines, and the lands granted by Congress and the State of Minne-
1195 sota to aid in the construction of said mortgaged railroad (described in said answer) and appertaining to said lines; that the lands so granted by Congress, then held by or to which the said Saint Paul & Pacific Railroad Company had any right, together with all and singular its property subject to the lien of said trust deed or mortgage, including the said lines of railroad and all its franchises, privileges, and immunities, including the franchise to be a corporation, should be sold as one property and not separately or in parcels, and that in default of payment of the sum due on said trust deed or mortgage, with interest, within five days after the date of said decree, that all and singular said mortgaged premises, property, rights, immunities, and franchises described in said bill of complaint and decree, including those described in and covered by said trust deed or mortgage, be sold at public auction by or under the direction of Horatio E. Mann, Esq., one of the masters of said court, at the eastern door of the United States custom-house build-

ing, where said court holds its sessions, in the city of St. Paul, in said district, as one parcel and as an entire property, to the highest and best bidder therefor, unless, previous to such sale, the amount of said decree and costs of said suit and expenses should be paid, provided that said property should not be sold for less than $1,500,000, and that the right and equity of redemption of the defendants in that suit and each of them and of all persons claiming by, through, or under them or either of them should be absolutely barred and foreclosed, save only such right of redemption, if any, as might exist under the statutes of Minnesota, and that upon the payment of the purchase-money bid at such sale and the confirmation of said sale by the court the said master should ex-
1196 ecute and deliver a certificate or deed of conveyance of the premises to the purchaser or purchasers thereof.

And your petitioner further shows that the said master advertised all and singular said premises for sale under said decree, as therein provided and as required by law, and on the fourteenth day of June, A. D. 1879, and pursuant to said previous notice thereof and at the place appointed and in conformity with the directions and provisions contained in said decree, said master duly sold all and singular said premises to your petitioner, it being the highest and best bidder therefor, for the price and sum of $1,600,000, duly paid therefor, and that said sale was by said master duly reported to said court, and that afterwards and at the June term thereof, to wit, on the twenty-first day of June, A. D. 1879, said court duly confirmed said sale and report and all proceedings thereon in all respects, and ordered and directed that said master forthwith execute and deliver to your petitioner, the purchaser at said sale, a certain certificate or conveyance of said premises and property so sold by him as aforesaid under said decree, and then submitted to the court with his report, as in said decree it was provided, and the form of which was thereby approved by said court; that said master, in pursuance of said decree and order of confirmation, duly executed to your petitioner such certificate or conveyance, whereby the title to all and singular the property described in and by said trust deed or mortgage and in said decree and so sold as aforesaid became and was and now is well vested, both at law and in equity, in your petitioner, and whereby it has succeeded to all the right, title, and interest of the said defendants in this suit in and to the premises in
1197 controversy therein and to all their rights in and to the lands within the limits, both place and indemnity, at or near Glyndon, in Minnesota, where the road so purchased by your petitioner crosses the road of said complainant, and which are also within the place and indemnity limits of the grant to said complainant, as claimed by it in this suit.

And your petitioner further shows unto your honors that on or about the eighteenth day of January, A. D. 1873, a patent was issued by the United States to the said complainant for 29,782 and $\frac{50}{100}$ acres of land within the limits of land granted for the railroad from St. Cloud to St. Vincent, being sections of land granted and withdrawn for the benefit of said road and to aid in the construc-

tion thereof, under the acts of Congress and legislation of the State of Minnesota mentioned in the answer in this suit, which said lands are situated at and in the vicinity of said crossing at Glyndon aforesaid and within the place and indemnity limits of said road; that thereafter and on or about the — day of ——, A. D. 187–, 3,276 and $\frac{29}{100}$ acres were patented to said complainant of the lands granted and withdrawn for the benefit of said road and to aid in the construction thereof, in like manner as aforesaid, from the place and indemnity limits of said road, making in all 33,058 and $\frac{79}{100}$ acres, all of which the said complainant claimed and still claims that it was well entitled to have under its said grant and as a part thereof, upon the grounds stated and set forth in its said bill of complaint, but which your petitioner submits and insists that the said St. Paul & Pacific Railroad Company was well entitled to have and to hold, for the reasons set forth in the answer in this suit, and your petitioner, by reason of the completion
1198 of said road, and its said purchase at said foreclosure sale, is now well entitled to have and hold as part of the property so sold and conveyed to it; that, as your petitioner is informed and believes, said lands were so patented to said complainant contrary to law, in violation of the grant for the said branch road to St. Vincent, and contrary to a previous decision of the Department of the Interior awarding to said St. Paul & Pacific Railroad Company or for its benefit all lands within its place and indemnity limits in odd-numbered sections at and in the vicinity of said crossing of said roads at Glyndon aforesaid within the limits of said complainant's said road, and that said lands were erroneously and inadvertently patented to said complainant, when they should have been patented to the State of Minnesota for the use of the said St. Paul & Pacific Railroad Company, and by said State should long since have been conveyed to it or to your petitioner as the rightful assignee of its interest therein; that said lands, in part, are referred to in the bill of complaint in this cause, wherein it is mentioned in substance that the Secretary of the Interior declined to direct proceedings to be instituted to cancel a patent for part of said lands, on the ground that "the right of the Saint Paul & Pacific Railroad Company is not, in my (the Secretary's) opinion, so entirely clear as to ask the institution of such proceedings, and that the parties will accordingly be left to the remedies afforded by the courts," and are mentioned in said answer as lands "previously conveyed to the said complainant."

And your petitioner further shows unto your honors that it is desirous of having its rights so acquired as aforesaid in and to the said lands within the limits of its said grant, where they are
1199 crossed by the limits of said complainant's grant, settled and adjudicated by this court, and to that end that its rights and interests in the premises may be properly presented to said court and represented before it; that it is advised that it is proper and necessary for that purpose that it be made a party defendant to this suit, and that it be allowed to answer said bill of complaint, and that it should have leave to file a cross-bill herein against said

complainant in relation to said lands so improperly patented to the said complainant, and which it is advised that by a proper construction and application of said grants now justly and equitably belong to your petitioner, and that a construction may be given to said grants, to the end that the entire controversy between the parties interested under the same may be settled in this suit without prejudice to the proceedings had and the proofs already taken in this suit, but with the right to both parties to take such further proofs as they shall be advised are material in respect to the controversy between them.

Wherefore your petitioner prays that an order may be made in this cause making it a party defendant thereto, with leave to answer said bill of complaint and to file such cross-bill against said complainant in respect to the said lands so patented to it by the United States as aforesaid as your petitioner shall be advised is proper and necessary, without prejudice to the proceedings and proofs already taken herein, but with leave to each party to take such further or other proofs as it shall be advised are material, and that the bill of complaint herein may be dismissed as to the defendant, Jesse P. Farley, as receiver, and that your petitioner may have such
1200 further or other order or relief in the premises as shall be agreeable to equity; and your petitioner will ever pray.

R. B. GALUSHA,
Solicitor for Petitioner.

(Verification April 7, 1884, by James J. Hill, president of the St. Paul, Minneapolis & Manitoba R'y Co., petitioner.)

(2.)

Order of May 3, 1884.

United States Circuit Court, District of Minnesota.

Term Minutes, December Term, A. D. 1883; May 3, 1884.

SATURDAY MORNING.

Court opened pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

THE NORTHERN PACIFIC RAILROAD COMPANY
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY *et als.*

The petition and motion of the St. Paul, Minneapolis & Manitoba Railway Company praying leave to be made and joined a party defendant herein, with leave to file a cross-bill, and that the
1201 bill of complaint herein be dismissed as to the defendant, Jesse P. Farley, receiver, having been heretofore heard by the court upon the order to show cause herein, dated April 7, 1884, and upon the pleadings, proofs, and proceeedings in this cause, and taken under advisement:

Now, the court, after due consideration thereof and being fully advised in the premises, files its written decision concerning the same.

Pursuant thereto it is—

Ordered that the said petitioner, The Saint Paul, Minneapolis & Manitoba Railway Company, have leave to become a party to this suit by supplemental bill for the protection of its rights and interests involved in this suit, such bill to be filed on or before the rule day in June, A. D. 1884, and such further proceedings be had upon the bill exhibited as shall be in accordance with equity.

And it is further ordered that the prayer to become a party defendant, with leave to answer and to have the original bill dismissed as to Jesse P. Farley, receiver, be, and the same is hereby, dismissed.

1202 COMPLAINANT'S EXHIBIT O 1.

United States Circuit Court, District of Minnesota. (In Equity.)

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Supplemental Bill.

For the purposes of this case it is stipulated as a fact that the Northern Pacific Railroad Company has received patents for or is claiming under its congressional land grant all the lands in odd-numbered sections within twenty miles on each side of the line of its railroad as located and constructed in Minnesota, to the same extent as if no grant had ever been made to the State of Minnesota to aid in the construction of any of the other lines of railroad mentioned in the pleadings.

This stipulation is to take the place of the complainant's Exhibits A 1, B 1, C 1, D 1, E 1, and F 1, which are withdrawn and need not be filed.

Dated May 9, 1885.

W. P. CLOUGH,
Sol'r for Defendant.
R. B. GALUSHA,
Sol'r for Plaintiff.

(Compl't's Exhibit O 1. O. B. Hillis, sp'l master.)

1203 & 1204 Circuit Court of the United States for the District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY.

Depositions of Wm. Crooks and James J. Hill.

George B. Young, solicitor for complainant.
W. P. Clough, solicitor for defendant.

1205 United States Circuit Court, District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
NORTHERN PACIFIC RAILROAD COMPANY.

Depositions of Wm. Crooks and James J. Hill.

Witnesses of lawful age, produced, sworn, and examined before Oscar B. Hillis, special master and examiner in chancery of said court, on behalf of the defendant, commencing at 10 o'clock
1206 in the forenoon, on the fifteenth day of November, A. D. 1884, at his office, in the United States custom-house, in the city of Saint Paul, in said district.

Present: George B. Young, solicitor for complainant; W. P. Clough, solicitor for defendant.

NOVEMBER 15TH—10 o'clock a. m.

Pursuant to the annexed notice the parties appeared by their respective solicitors and counsel, complainant by George B. Young and H. R. Bigelow, and defendant by W. P. Clough. Thereupon the defendants offer in evidence the following:

Defendant's counsel offers in evidence the matter contained on page 81 in the book of the minutes of the meetings of the St. Paul & Pacific R. R. Co., a copy of which is hereunto annexed, marked Defendant's Exhibit 1.

Defendant's counsel also offers in evidence copy of secs. 1 and 2 of chap. 160 of the Laws of the Territory of Minnesota, 1856, being an act entitled "An act to incorporate the Minneapolis and St. Cloud R. R. Co.," which is hereto annexed, marked Defendant's Exhibit 2.

Defendant's counsel also offers secs. 1 and 2, chap. 5, of the Special Laws of Minnesota of 1864, being an act entitled "An act to amend an act to incorporate the Minneapolis and St. Cloud R. R. Co.,"
1207 passed March 1, 1856, a copy of which is hereto annexed, marked Defendant's Exhibit 3.

WM. CROOKS, a witness called on the part of the defendant, is duly sworn and testifies as follows:

Direct examination by Mr. CLOUGH:

Q. How long have you lived in the State of Minnesota?
A. Since the spring of 1857.
Q. What has been your occupation during that period?
A. Civil engineer and contractor.
Q. For the construction of railroads?
A. For the construction of railroads.
Q. State if you had anything to do with the construction of the lines of railroad now owned by the St. Paul, Minneapolis & Manitoba R. R. Co., which used to be designated the St. Paul & Pacific Extension lines.
A. I did.
Q. What relation did you bear to the construction of those lines?
A. I was contractor for the construction of those lines.
Q. At about what time did that relation of contractor begin?
A. In 1871, I think.
Q. State the length of the branch running from Watab to Brainerd and that of the branch running from St. Cloud to St. Vincent—between those two points.

1208 A. It was 45 miles from Watab to Crow Wing and 8 miles more to Brainerd; that would be about 55 miles from Watab to Brainerd, and from St. Cloud to St. Vincent about 314 miles.

Q. The aggregate length of the two lines would be about how much?
A. Three hundred and sixty-nine miles.
Q. What would be the length of a line of road from Watab by way of Crow Wing and the intersection of the tenth standard parallel with the fourth guide meridian to St. Vincent?
A. I should say, in round numbers, 300 miles.
Q. As contractor for the construction of those lines, state whether you had occasion to pass through the country through which those branches extend so as to know its character.
A. I have been very familiar with that country a great many years.
Q. Please state the character of the country that the St. Vincent Branch, so called, runs through.
A. It runs through a quite rolling timber country as far as Melrose; from there the country remains rolling until you get beyond Fergus Falls. Then from Fergus Falls, a little beyond Fergus Falls, to St. Vincent it is all an open prairie country. It is called the Red River flats. It is a very flat country all the way to St. Vincent. It is entirely prairie.
Q. What are the characteristics of the region between St. Cloud and St. Vincent along the line of the constructed road, with respect to fertility of soil and resources that would afford transportation business for a railroad?

1209 A. There is not in the State of Minnesota, in my judgment, a line more favorably located to accomplish what you mean than that. It is a country in which there is not a waste acre of land, that I know of, and well adapted to settlement.

Q. How far either side of the line of road do these characteristics extend?

A. It extends, to my knowledge, twenty-five miles each side of the line. In fact, the country is better as you get a little farther east. I was engineer of the St. Paul & Pacific R. R. Co. at the time of the change of line that was authorized by the act of Congress of 1871, and I was a strong advocate of the change. No; I am mistaken; I was not engineer in 1871. I left in 1869, but while I was engineer I urged the change which was afterwards made, as I have stated.

Q. For what reason?

A. Because it was substituting an excellent country for one which was very bad, comparatively speaking.

Cross-examination waived.

Witness excused.

Signing waived.

Further proceedings adjourned until Monday morning, Nov. 17th, at 10 o'clock.

MONDAY MORNING, *November 17th*, 10 a. m., 1884.

Upon application of W. P. Clough, Esq., solicitor for the defendant (the solicitors for the complainant agreeing thereto), the
1210 further taking of testimony on behalf of defendant is adjourned until Wednesday morning next at 10 o'clock.

Wednesday morning, Nov. 19, 1884, at 10 o'clock, the solicitors for the respective parties met pursuant to adjournment, and not being able to continue the taking of said depositions, by agreement of counsel, the further taking of testimony on behalf of complainant is adjourned until Friday, November 21st, at 2 p. m.

Pursuant to adjournment, on this twenty-first day of November, A. D. 1884, between the hours of 2 and 5 p. m., at the clerk's office of the United States circuit court, I continued the taking of said depositions as follows, to wit:

JAMES J. HILL, a witness called on the part of defendant, after being duly sworn, testifies as follows, to wit:

Direct examination by Mr. CLOUGH:

Q. You are the president of the St. Paul, Minneapolis & Manitoba R. R. Co.?

A. Yes, sir.

Q. And were one of the original incorporators of that company and have been connected with it ever since its organization?

A. Yes, sir.

Q. In an official capacity?

A. First as general manager; next vice-president; then president.

Q. Before that time were you interested in the property which now belongs to this line?

1211 A. I was interested as a bondholder.

Q. And before that time were you acquainted with the transportation interests of the region through which that road runs by being engaged in the transportation business or otherwise through the region of the country through which the road runs?

A. I was familiar with the transportation between St. Paul and St. Vincent and Winnipeg and that upper country.

Q. Have been for a good many years?

A. Yes, sir.

Q. About how long?

A. Twenty years continuously.

Q. State whether you have not for that length of time known the resources and character of the region through which the line runs from St. Cloud to St. Vincent as now constructed.

A. My knowledge of that country commenced about fifteen years ago.

Q. What are the general characteristics of the region through which that line runs?

A. They are much varied with timber and prairie to the valley region of the Red River.

Q. Is the region mostly productive or otherwise?

A. Yes, sir; it is mostly productive—not largely productive.

Q. Naturally calculated throughout its entire length to afford considerable transportation?

A. The country is, on the whole, a fertile country.

1212 Q. The best in the State?

A. Well, I should say it is a good section of fertile country.

Q. When did you first become connected with the properties as bondholder?

A. In the fall or winter of 1877, I think. Speaking from recollection, it would be about the fall of 1877.

Q. The line of road spoken of was at that time in the hands of Mr. Farley, as receiver, and it was before the organization of the Manitoba Company?

A. Yes, sir; before the organization of that company.

Q. Was your connection as a bondholder as a member of a syndicate?

A. A large majority of the bonds in which I was interested were held by a syndicate.

Q. To what extent were the bonds of the St. Paul & Pacific Railroad Company held by that syndicate at the time of the decree of foreclosure rendered by this court—the fifteen-million foreclosure?

A. I think about eighty or eighty-five per cent. The records of the court will show accurately.

Q. When were those bonds acquired by that syndicate?

A. During the fall of 1877. The negotiations were commenced long before that, but they were consummated in the fall of 1877 or spring of 1878.

Q. Was that the same syndicate of gentlemen that organized the St. Paul, Minneapolis & Manitoba R. R. Co.?

1213 A. Yes, sir.

Q. What was the market value of those bonds—of the fifteen-million issue—at the time that purchase was made?

Objected to as immaterial.

A. We paid for the bonds purchased by the syndicate as high as thirteen and three-quarter cents.

Q. What was the lowest price?

A. I don't know. There was very little market for them. We paid thirteen and three-quarter cents on the dollar, probably for nine-tenths of all we bought.

Q. Didn't they get down as low as seven or eight at one time?

A. I think, perhaps, they might have been quoted at that, but you couldn't buy any. I know when I commenced negotiations on the market value I found I couldn't get any.

Cross-examination waived.

Witness excused.

Signing waived.

DEFENDANT'S EXHIBIT II.

An act to incorporate the Minneapolis & St. Cloud Railroad Company.

SECTION 1. John H. Stevens, William Hanson, Franklin Steele, Alfred E. Ames, R. P. Russell, J. P. Wilson, J. L. Crocker,

1214 George F. Brott, J. M. Winslow, A. M. Fridley, John Banfil, and all other persons as shall hereafter become stockholders in the company hereby incorporated shall be, and are hereby, made a body politic and corporate by the name and style of the "Minneapolis & St. Cloud Railroad Company," and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in any and all courts and places whatsoever as fully as natural persons; and the said corporation may make and use a common seal and alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with and of acquiring by purchase, gift, grant, device, or otherwise and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this act and of the said corporation.

SEC. 2. The said corporation is hereby authorized and empowered, and it is hereby declared to be the objects and purposes thereof, to survey, locate, construct, complete, maintain, use, and operate, and at their pleasure alter the line thereof, a railroad with one or more tracks or lines of rails from a point to be selected by this company in Minneapolis, in the county of Hennepin, in the Territory of

Minnesota, by the most feasible and practical route to St. Cloud, in the county of Stearns, on the Mississippi river, and also a main line of road by way of Mille Lacs to a point at or near the mouth of the St. Louis river, together with all necessary and proper
1215 stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad.

DEFENDANT'S EXHIBIT III.

An act to amend an act entitled "An act to incorporate the Minneapolis & St. Cloud Railroad Company," passed March first, eighteen hundred and fifty-six.

SECTION 1. That the first section of said act, to wit, An act to incorporate the Minneapolis & St. Cloud Railroad Company, be, and the same is hereby, amended so as to read as follows: That E. M. Toby, Francis Morrison, B. B. Meeker, H. C. Burbank, J. P. Wilson, O. S. Freeman, H. C. Waite, R. C. Corbett, Charles A. Gilman, R. M. Richardson, J. J. Porter, and Henry Hill, their assigns or survivors, and all such persons as shall hereafter become stockholders in the company hereby incorporated shall be, and are hereby, made a body corporate by the name and style of the Minneapolis & St. Cloud Railroad Company, and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended, in any and all courts of law and equity, as fully as natural persons; and the said corporation may make and use a common seal, alter and renew the same at pleasure, and by their corporate name and style shall be capable of contract-
1216 ing and being contracted with and of acquiring by purchase, gift, grant, or otherwise and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this act and of the said corporation.

SEC. 2. That the said section of this act to which this is an amendment shall be and read as follows: The said corporation is hereby authorized and empowered to survey, locate, construct, complete, maintain, use, and operate a railroad from Minneapolis to St. Cloud and from St. Cloud to the navigable waters of Lake Superior, with all necessary and proper stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad. The said corporation is also authorized and empowered to survey, locate, build, and operate a branch railroad from St. Cloud to some point on the Minnesota river between township ranges twenty-five and thirty-one west of the fifth principal meridian, with like privileges for stations, depots, turnouts, engines, cars, and the usual furniture of a first-class railroad.

1217 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

Circuit Court of the United States.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing five separate volumes, consisting of 1217 pages numbered consecutively from 1 to 1217, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause and of the whole thereof as appear from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 15th day of June, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh year.

U. S. Circuit Court Seal, Dist. of Minnesota.

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy*.

[Endorsed:] United States circuit court, district of Minnesota. The Northern Pacific Railroad Company *et al. vs.* The St. P. & P. R'y Co. *et al.* The St. Paul, Minneapolis & Manitoba Railway Company *vs.* The Northern Pacific Railroad Company. Return to Supreme Court.

[Endorsed:] United States circuit court, district of Minnesota. N. P. R. R. Co. *vs.* St. P & P. R. R. Co. The St. P., M. & M. R'y Co. *vs.* N. P. R. R. Co.

Endorsed on cover: Minnesota C. C. U. S. No. 344. The St. Paul & Pacific Railroad Company, Jacob S. Wetmore, Thom Denny, and Thomas W. Pearsall, trustees, &c., and The St. Pau Minneapolis & Manitoba Railway Company, appellants, *vs.* Th Northern Pacific Railroad Company. Filed June 27, 1887.

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Endorsed on cover: Minnesota C. C. U. S. No. 311. The St. Paul & Pacific Railroad Company, Jacob S. Wetmore, Thos. Denny, and Thomas W. Pearsall, trustees, &c., and The St. Paul Minneapolis & Manitoba Railway Company, appellants, *vs.* The Northern Pacific Railroad Company. Filed June 27, 1887.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 54.

THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*, *Appellants*,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY, *Appellee*.

Petition of Appellants for Rehearing

S. U. PINNEY,
GEO. B. YOUNG,
Counsel for Appellants.

WEST PUBLISHING CO., PRINTERS AND STEREOTYPERS, ST. PAUL, MINN.

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THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*, *Appellants*,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY, *Appellee*.

PETITION FOR REHEARING.

To the Honorable the Justices of said Court:

The appellants in the above entitled cause humbly pray that the court will rehear and reconsider the matters decided on the 2d day of March, 1891, so far as the same involve the question of priority of title as between the St. Paul &

Pacific Railroad Company and its successor, the St. Paul, Minneapolis & Manitoba Railway Company, of the one part, and the Northern Pacific Railroad Company, of the other part, to the lands described in the original bill of complaint herein which lie outside of the 20-mile or place limits of the Northern Pacific Railroad Company, (being the lands embraced in Schedules C and D of the decree appealed from,) and that as to such lands the said decree may, upon such rehearing and reconsideration, be reversed with costs.

The grounds of this application are that the court in its said decision, as evidenced by its written opinion therefor, filed on March 2, 1891, giving its reasons therefor, inadvertently erred in respect to certain matters of fact and law material to and decisive of said question, and that in consequence of said errors the decision of the court was against the evidence.

The opinion of the court, in the last paragraph thereof, thus disposes of the appellants' objection that no evidence was produced by the Northern Pacific Co. of any selection of any of said lands lying outside of its 20-mile or place limits on each side of its railroad as definitely located:

"As to the objection that no evidence was produced of any selection by the Secretary of the Interior from the indemnity lands to make up for the deficiencies in the lands within the place limits, it is sufficient to observe that all the lands within the indemnity limits only make up in part for these deficiencies. There was, therefore, no occasion for the exercise of the judgment of the secretary in selecting from them, for they were all appropriated."

Your petitioner respectfully submits that the court erred in its assumption *of fact* that "all the lands within the indemnity limits only make up in part for those deficiencies" —*i. e.*, for the deficiencies in the place limits for which the company *has a right to resort* to the lands in one or both of the indemnity limits. And that the court consequently erred in its resulting inference that all the lands in both indem-

nity limits were appropriated upon the filing of the map of definite location of the Northern Pacific railroad.

By the 3rd section of the act of July 2, 1864, and the joint resolution of May 31, 1870, two separate pairs of indemnity belts are given to the Northern Pacific Co.

The First Indemnity Belts, under the Act of July 2, 1864.

The original belts given by the act of 1864 lie next to the 20-mile or place limits on each side of the line as located and built. From *these* belts the company may fill *any* deficiency in its place limits for which indemnity is given by the act.

These original indemnity belts, 10 miles wide on each side of the line, *are an entirety* from one end of the line to the other. They are not cut into sections by state or territorial, any more than by county, lines. Losses in the place limits in Minnesota may be made up in Dakota, Montana, or elsewhere.

This is apparent on reading the 3rd section of the act of July 2, 1864. And this is the construction put upon that section by the Northern Pacific Co. and by the United States.

Opinion of Attorney General Garland, dated January 17, 1888. 15 Copp. L. O., 233; 8 Dec. Dep. Int. Public Land, 13, 14, 17–18.

In this opinion, addressed to the Secretary of the Interior, two questions put by the Secretary are answered, viz.:

"*First*—Did the joint resolution of May 31, 1870, create a second indemnity belt beyond and in addition to the indemnity belt created by the granting act of 1864?

"*Second*—If you answer the first proposition in the affirmative, and find that there are two indemnity belts, can selections be made within the first belt for losses outside the particular state or territory in which the same occurred?"

After answering the first question in the affirmative, and showing that such has been the uniform construction of the resolution by the Interior Department, the Attorney General, in answer to the second question, quotes the provision in the first section of the act of 1864 giving the right to locate and build "a *continuous* railroad and telegraph line" from Lake Superior to Puget Sound, and then says:

"By this a continuous line is provided for. No state or territory is ever named in it except as the starting point and terminus of that line. State and territorial lines are not mentioned nor in any way recognized as constituting divisions which break the continuity. On this unbroken line alternate sections are granted to the amount of ten per mile on each side within the states, and twenty within the territories. Whenever lands shall have been lost to the company from the amount granted within the primary limits by previous settlement or purchase, the act declares—

"'Other lands shall be selected by said company in lieu thereof under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections.'

"This clause as a whole provides for an indemnity for lands lost out of the amount granted. The conditions of this indemnity, set forth in detail, under which the right or privilege of selection vests in the company, are: Lands shall have been lost out of the amount granted; selections must be made by the company of other lands in lieu of them; those selections must be made under the directions of the secretary of the interior; selections shall only be of alternate odd-numbered sections, and they must not be more than ten miles beyond the limits of the granted sections. These are all the limitations or conditions provided by the act of 1864, subject to which the right to select is granted. Interpretation will not warrant the adding of another limitation that the lieu lands must be selected in the same state or territory in which the lands were lost. To annex such an additional limitation to the words of the grant would be legislation, and not construction." And, after pointing out the difference in this respect between the act of 1864 and the joint resolution of May 31, 1870, and the use of the words "in such state or territory" in the latter, the opinion ends as follows: "In the

absence of any such words, I do not feel authorized to interpolate them as an additional limitation to the law as enacted. I therefore answer your second inquiry also in the affirmative."

We understand the legal proposition announced and applied for the first time in this case, to be in substance this:

Where the lands from which indemnity may be sought for losses in the place limits are less in amount than the losses for which such indemnity may be sought, no selection of parcels is necessary.

Since indemnity for losses in the place limits in Minnesota may be sought any where in the first indemnity belts from Lake Superior to Puget Sound, it necessarily follows that the Northern Pacific Co. is not relieved from the necessity of selection, by a shortage in that part of the first indemnity belts that lies in Minnesota.

From the fact that the first indemnity belts in Minnesota are insufficient to fill the losses in Minnesota, it does not follow that in the *entire* first indemnity belts there are not lands enough to fill and more than fill all losses in the *entire* place limits. *There is no presumption* that there are not lands enough in the first belts to fill all losses in the place limits whether incurred in Minnesota or elsewhere.

And to bring the case within the law as enounced by the court, the company seeking to excuse a failure to select must aver and prove that in the whole limits from which selection may be made, (in this case the *entire* first indemnity belts,) the losses as indemnity for which the *unselected* lands are claimed could not be filled; or at least that all its losses could not be filled in those limits. The burden of showing this is, of course, on the Northern Pacific Co.

But the bill of complaint nowhere alleges that the *entire* first indemnity belts given by the act of 1864 did not contain, when the plaintiff's map of location was filed, on November 21, 1871, or that they have not ever since contained.

enough and more than enough lands subject to selection to make up all deficiencies in the company's primary limits for which it is given indemnity by the act, whether occurring in Minnesota or any where else along its line.

On this point the only averment in the bill is that, on filing the map of location—

"There was not *in said state of Minnesota*, at the time of the definite location of said railroad as aforesaid, including all the lands hereinafter described, the amount of lands per mile granted by Congress to your orator as aforesaid within the limits prescribed by its charter, the said act of July 2, 1864. Nor was there then nor is there now, in said state of Minnesota, including all the lands hereinafter mentioned and described, within the said 40 miles on each side of said railroad, that amount of land not granted, sold, occupied by homestead settlers, pre-empted or otherwise disposed of."

Record, 46 (136–7.) Put in issue. Record 70 (186.)

The averment of deficiency is *limited* to an averment of insufficiency, *in Minnesota*, of lands to make up deficiencies in the primary limits *in Minnesota*.

And the only evidence of insufficiency of lands in the first indemnity belts (given by the act of 1864) to fill deficiencies in the place limits, is that there is not land enough within plaintiff's limits *in Minnesota* to give plaintiff a full grant of 20 sections for each mile of its line *in Minnesota*.

Knowlton, in Record 273–4 (634.)*

So far as the original belts, under the act of 1864, are concerned, the case, upon the pleadings and evidence, is one where deficiencies occurring in the place limits along *part* of a line cannot be supplied from the indemnity limits along and opposite *that part* of the line, although, along the *entire* line, there may be abundance of lands to more than fill the grant for the entire line. As if, for instance, within a county of Minnesota, or along a 100-mile or a 20-mile section of the St Paul & Pacific line, (which by the act of 1857

* This Evidence, largely mere conclusions, is confined to deficiency in Sept. 1877, which may have resulted from Dispositions after the definite location (in Nov. 1871) owing to R.R.'s failure to select.

was to get its land as 20-mile sections were built,) there were not lands enough in the indemnity limits of that company to fill deficiencies in the place limits within that county or along that section. Location of line certainly would not appropriate all lands in the indemnity limits in that county or along that section, unless it were also shown that *all* the lands in the indemnity limits *along the entire line* were insufficient, or were not more than sufficient, to fill the entire grant.

And this would be the case although, as in the act of March 3, 1857, the lieu lands were to be selected "nearest to the tiers of sections" in which the loss which they supply may have occurred. In certain tiers of sections the losses may have been so great as to require *all* the tiers of sections in the indemnity limits opposite or nearest them to partially make good such losses. But it was never supposed, and we do not understand the court to now hold, that this alone would dispense with selection of such opposite or nearest sections. Selection would still be necessary unless *all* the indemnity lands to which resort could in any case be had to supply losses, should prove insufficient to supply the entire deficiency along the whole line.

We submit therefore that the rule adopted by the court is not applicable unless it be alleged and proved that there is not land enough in the *entire* first indemnity belts to fill the deficiencies for which the lands in question are claimed, or at any rate that there is not land enough in such belts to fill the deficiencies in the entire place limits. That such allegation and proof are wanting. That it cannot be presumed in this, any more than in the cases where selection has been held necessary, that in the entire first indemnity belts there will be a shortage. That therefore, upon the pleadings and evidence, no case is made for applying the rule of law adopted by the court. That, in assuming that such a case was presented, the court inadvertently overlooked the entirety

of the first indemnity limits, and in effect made a decision without evidence to sustain it and resting on a misapplication of the law.

The position that the indemnity limits of the Northern Pacific Co. are an entirety was taken in the brief of Mr. Pinney in this court, (page 98,) and was thus stated in the brief of Mr. Young in the circuit court, (being one of those requested by Mr. Justice Brewer at the oral argument in this court, and furnished to him,) on page 19, in answer to the claims that a shortage in Minnesota excused selection, and that a general claim to all lands in the indemnity limits was equivalent to specific selections:

"And as there is no proof, so there is no presumption, of any deficiency in the *entire* grant to the Northern Pacific Company. Its indemnity limits along its entire line are *an entirety;* and *non constat* that on its *entire line* there is any shortage, whatever may be the case in Minnesota. And if a general claim is equivalent to selection in Minnesota, without designation of any specific tracts as selected, how could the indemnity selections be regulated and the grant adjusted in the territories west of Minnesota? See the *Herring Case,* 110 U. S. 27, 39–40." And see, also, Justice Miller's remarks in *St. Paul Railroad* v. *Winona Railroad,* 112 U. S. 720, at pages 731–2.

The Land in the Second Indemnity Belts.

These belts, given by the joint resolution of May 31, 1870, are cut and limited by state lines. A deficiency in place limits in Minnesota, for which the company might have a right to resort to these belts, must be filled, if at all, in Minnesota.

But not every deficiency may be filled from these belts. Only those arising from dispositions within the place limits made *subsequent to July 2, 1864,* can be filled by resort to these belts. Though every acre in the place limits and the first indemnity belts in Minnesota had been lost by disposi-

tions prior to location, yet, unless those dispositions, or some of them, were subsequent to July 2, 1864, the company could not take one acre in the second indemnity belts.

And so it might be that *all* the lands along the whole line — in all the indemnity belts—would be insufficient to supply *all* the deficiencies in the place limits along the whole line, and yet the company might not be entitled to all—not be entitled to more than a few, perhaps not to any—of the lands in the second belts. For the deficiencies might have occurred principally, if not wholly, from dispositions prior to the act of July 2, 1864.

To make a case for applying to these second belts the rule adopted by the court, it is not enough that the lands in the second (or in the first and second) indemnity belts are insufficient to fill the losses of lands in place.

Though the odd sections in the indemnity belts be less in amount than the entire losses, selection might still be necessary in case a right to indemnity for part only, and not for all the losses, were given.

Hence it must appear — must be alleged and proved — that the lands in the second belts in Minnesota are insufficient to fill losses in Minnesota *for which the company has a right to resort* to the second belts.

The only losses for which plaintiff can resort for indemnity to the second belts being those caused by dispositions subsequent to July 2, 1864, no case is presented for the application of the rule adopted by the court dispensing with selection, unless it appear that these belts are insufficient to supply *this* class of losses.

The bill of complaint accordingly alleges that there were not enough lands in these second belts, undisposed of at the date of location, to make up the deficiency in lands in place caused by dispositions subsequent to July 2, 1864. Record, 46 (137.) Put in issue. Record, 70 (186–7.)

But no attempt was made to prove this allegation. There is absolutely no evidence that the plaintiff's losses in Minnesota by dispositions subsequent to July 2, 1864, equal all the land in odd sections in the second belts not disposed of on November 21, 1871, when its map of location was filed—no evidence that *all* the lands in the second indemnity belts could be lawfully appropriated to plaintiff's grant.

Indeed, there is no evidence that *any* of the lands in the second belts could be so appropriated, for it is not shown—no attempt was made to show—that *any* of plaintiff's losses in Minnesota resulted from dispositions made subsequent to July 2, 1864.

The record will be searched in vain for a scintilla of evidence that any land whatever has been lost by plaintiff in Minnesota by reason of any grant, sale, pre-emption or homestead entry or claim, or any other disposition subsequent to July 2, 1864.

We therefore submit that in applying to these second indemnity belts the rule adopted by the court, the court inadvertently fell into error by assuming that upon the evidence a case for such application was made, and by overlooking the fact that no such case was made or attempted to be made. And that in respect to these lands the decision is erroneous, because of the entire want of evidence to sustain it.

The position here taken as to the nature of the second indemnity belts; that not all losses, but only those occurring after July 2, 1864, can be filled from them; and that to show title to any lands in these belts the Northern Pacific Co. must show not only selection, but a right to select—must show losses since July 2, 1864, and a selection to fill those losses—was taken in the briefs in this court.

See Mr. Pinney's Brief, pp. 23, 98; Mr. Young's Brief, pp. 24, 35–6, 79.

It was the subject of the 2d and 5th exceptions to the Master's Report. Record, 220 (511)–221 (514.) Mr. Pinney's Brief, pp. 82, 84.

And it is the subject of the 4th assignment of error. Mr. Pinney's Brief, p. 87.

The Necessity of Selection.

If the plaintiff had shown selections, or if for any reason selections were unnecessary, the errors for which we ask a rehearing might not prejudice us. It may therefore be incumbent on us, and in any event it would seem proper for us, to show (1) that under no other rule than that applied by the court could specific selections be dispensed with in respect to these lands, and (2) that no evidence of any selections was introduced.

As against defendant's title under the patent to the State of Minnesota, the plaintiff must of course show a complete equity; must show that it has taken every step prescribed by law to give it the right to receive the patent from the United States.

The general rule, emphasized by repeated decisions of this court, is that a company has no right whatever in any piece of land claimed as indemnity land until actual selection of that piece of land.

> *St. Paul Railroad* v. *Winona Railroad*, 112 U. S. 720, 731–2.
>
> *Wisconsin Central Railroad* v. *Price County*, 133 U. S. 496.

And the plaintiff's granting act (in section 3) expressly requires, as a condition of acquisition of indemnity lands, that such lands "shall be selected *by said company* in lieu thereof, under the direction of the Secretary of the Interior."

The selection is to be made not by the secretary but by the company in the first instance, and, when so made, it is subject to approval by the secretary.

The fact that the secretary decided, in a test case, that the company was not entitled to any lands of the same class to which such test lands belong, as it did not preclude plaintiff from making selections, would not excuse it from doing so. If the selection were to be made solely by the secretary, (as language already quoted from the opinion of March 2, 1891, might be construed as holding, though, of course, such could not have been the meaning of the court,) then, in some cases, the company, having done all the law required it to do, would not be chargeable with the secretary's omissions. But the company is to select. The failure to select is its failure to take a step required of it by the law as a condition precedent, and wholly within its power.

It has been held that even a defendant, holding indemnity lands with the legal title, was not excused from actual selection by the fact that the secretary certified the land for it without selection, and that even the receipt of such certificate was not the equivalent of a selection.

> *St. Paul Railroad* v. *Winona Railroad*, 112 U. S. 720, 733.

And the circuit court, while it held that lands (1) in the plaintiff's place limits, and (2) in that part of its indemnity belts covered by the withdrawal of October 12, 1870, need not be selected, yet held that plaintiff could not recover any of the lands not within the withdrawal limits without proof of selection. Its language is:

"The only remaining lands are those outside these withdrawal limits, but within the indemnity limits of the Northern Pacific. As to them but a word is necessary. No rights are acquired until selection," (citing cases.) "No prior selection on the part of the Northern Pacific is shown. Its claim that as the holder of the prior grant it has a reasona-

ble time in which to make a selection, if good in law, which I doubt, is not sustained by the facts."

Record, 184, (418–9;) 26 Fed. Rep. 562–3.

But that a mere withdrawal gives no title and does not dispense with the requirement of selection by the Northern Pacific Co. is the uniform holding of this court. Nor does a withdrawal of lands in common indemnity limits, for one company, preclude selection by the other.

St. Paul Railroad v. *Winona Railroad*, 112 U. S. 720, 732.

And see Mr. Pinney's Brief, 167–8; Mr. Young's Brief, 66½.

The Pleading and Evidence as to Selection.

1. The plaintiff has not alleged or proved any selection of any of the lands in either the first or the second indemnity belts.

2. It has not shown any right to select in the second belts, not having shown any losses subsequent to the act of July 2, 1864.

The bill nowhere alleges any selection by plaintiff of any lands. The only averment of any selection is of a selection of 1,920 acres by the St. Paul & Pacific Co. for the purpose of a contest.

Record 61 (164.)

The bill proceeds on the theory that no selection was necessary—that location and withdrawal, of themselves and without selection, entitle plaintiff to all the lands within 40 miles of its located line if needed to make up 20 full sections per mile.

Record 45 (135;) 61 (163.)

In their original brief (pp. 22, 75) the plaintiff's counsel refer to several places in the record as containing evidence of selection of these indemnity lands by plaintiff.

In their supplemental brief (pages 24–27) they allege the same and other matters (some not in the record at all) as showing selection.

We proceed to take these up, not in the order used by plaintiff's counsel, but in their natural order.

1. *The passages cited from the original bill.*

Pages 46, 63 and 64 contain not one word about selection.

Page 61 alleges (as above stated) merely a selection by the St. Paul & Pacific Co.

2. *The proof in support of the original bill.*

Here, if anywhere, the evidence should be found. Plaintiff's title must be shown at the hearing by the evidence already taken. He cannot go to a hearing on insufficient evidence of title, and then get a reference to a master to supply defects in his proofs.

Page 296 (Ex. 10) is a list of land "*subject to selection*" by the Northern Pacific Co. in the Fergus Falls district, within its 40-mile limits, "including, however, lands which have been awarded to the St. Paul & Pacific." This is certified September 12, 1877, two years and a half after suit brought. Record, 298 (676.)

Page 298, (Exhibit 11.) A like list and certificate from the St. Cloud land office, dated September 10, 1877.

Page 301 (Ex. 12) is an "abstract of lands *subject to* selection" by the Northern Pacific Co. in the Detroit district, within its 40-mile limits. Dated September 1, 1877.

Pages 302–320 (Ex. 13) is a like list of lands "subject to selection" by the Northern Pacific Co. in the Duluth district. Dated September 3, 1877. (See certificate on page 320.)

The "Sole Purpose" of Ex. 10-14 is stated in Record, 273 (683.)

Page 331 (Ex. 24). Letter from commissioner to register and receiver, November 14, 1873, referring to lands already "certified by you for the Northern Pacific Co.," and selected by the St. Paul & Pacific Co. There is nothing to show what these lands were, or whether they included any of the lands now in question. And there has never been any claim that any of the lands in question were ever certified to plaintiff, for they were certified and patented to the State of Minnesota.

Page 332, (Ex. 25.) Denial of application for rehearing of the contest over the 1,920 acres selected by the St. Paul & Pacific Co., March 27, 1874.

Page 334 (Ex. 30.) A letter of instructions to register and receiver, December 26, 1871, enclosing map of plaintiff's located line and land-limits, and directing them, *in the language of plaintiff's charter*, what action to take on any lists of lands selected that the company may in the future submit.

3. *The averments in the supplemental bill of the Manitoba Co.*

Plaintiff's counsel refer to pages 135 and pages 138–9.

Page 135. An averment that the lands claimed by the Northern Pacific Co., in its original bill, and described in Exhibit A to *that bill*, had been patented to the state for the St. Paul & Pacific Co., and that the Northern Pacific Co. had brought suit for them.

Pages 138–9. Averments that the Northern Pacific Co. has obtained patents for lands in Exhibit A to the *supplemental* bill, and has "selected" and is claiming patents for the lands in Exhibit B to *that* bill.

But the exhibits mentioned show in their captions that the lands are all within the *place* limits of both companies, and hence are not the lands claimed by the Northern Pacific Co.

as indemnity lands. And of course these lands are no part of the lands in that company's original bill.

Record 141 (351), 144 (355.)

It may be suggested that although title to lands in place vests on location, yet, to obtain the patent or certified lists for *place* lands which are evidence of title, the companies are required to and do make up and submit lists of lands for which a certificate or patent is sought. And so they "select" the lands which make up such lists. But this is a very different act in law from the "selection" of indemnity lands.

4. *The evidence on the supplemental bill.*

Pages 486–7. Chas. B. Lamborn, land-commissioner of the Northern Pacific Co., was called for the Manitoba Co. and produced the patents issued to the Northern Pacific Co., a list of the lands in each patent being marked and offered in evidence as Exhibits A 1 to E 1, inclusive. He also produced a list of lands selected and claimed by the Northern Pacific Co., which was introduced and marked F 1.

Afterwards a stipulation was made as a substitute for these exhibits "which are withdrawn and need not be filed." That stipulation is to the effect that the Northern Pacific Co. "has received patents for or is claiming all the lands in odd-numbered sections within *20 miles* on each side of its line of railroad as located and constructed in Minnesota, to the same extent as if no grant had ever been made to the State of Minnesota to aid in the construction of any of the other lines of railroad mentioned in the pleadings. This stipulation takes the place of complainant's Exhibits A 1, B 1, C 1, D 1, E 1, and F 1, which are withdrawn and need not be filed."

Record 585 (1202.)

The sole purpose of the evidence and the stipulation was to show that the Northern Pacific Co. claimed that on November 21, 1871, when it filed its map of location, the prior grants of 1857 for a line from Crow Wing to St. Vincent (crossing its own line) and the prior grant of 1862 for a line to Lake Superior, had been surrendered, and that therefore the act of March 3, 1871, was already in force. And of course, whether the act of March 3, 1871, were or were not in force would only affect the Northern Pacific Co.'s claim to *place* and not to indemnity lands.

See Mr. Pinney's Brief, p. 68; Mr. Young's Brief, 67.

And it is perfectly clear that lands patented to the Northern Pacific Co. by Ex. A 1–E 1, or lands certified to it by Ex. F 1, could not have included any of the indemnity lands which it seeks to recover, which had been certified and patented to Minnesota.

On page 25 of the supplemental brief, counsel quote what they say is a recital in one of these patents, but which is not in the record, and not in evidence. It shows that certain lands patented to plaintiff had been selected. It does not show that the lands in question, patented not to it but to the State, had been selected by it.

On page 487, Mr. Lamborn testifies, *not* (as stated by counsel, p. 26) "that the Northern Pacific Co. had selected its lieu and indemnity lands in Minnesota," but merely that it had selected the lands in the patents and also the lands in Ex. F 1, and had had those last lands "certified to at the land office," and that he knows no reason why patents have not issued for such lands "except the ordinary delays of the land office." And he says these lists (which make up Exhibit F 1) "have mostly been made within the last two years—largely within the last year. * * My impression is that lists for the lands now pending in the land office for patents were not made up until I commenced to make them about 18

months ago." Record, 487 (1018.) He was testifying on Oct. 14, 1884, nearly ten years after the Northern Pacific Co. brought this suit. Record, 475 (998.) And he undertakes to (and afterwards does) produce "true copies of the lists of lands so selected by the Northern Pacific Railroad Company and not yet patented to it," as Ex. F 1, being the selections made within two years, duly certified, and pending for patent. Record, 487 (1018–9.)

It is entirely clear (1) that Ex. F 1 contained none of the indemnity lands here in question, nor any lands in the Northern Pacific Co.'s indemnity belts; and (2) that it contained no lands selected prior to February, 1875, when this suit was brought, nor prior to 1882.

5. *The proceedings at the hearing.*

Counsel, in their supplemental brief, (p. 24,) say: "We find the first mention of the question" of selection of indemnity lands "was made before the master."

But the argument in the circuit court at the final hearing was largely directed to this question, as appears by the briefs (already furnished the court) an extract from one of which has been presented. And in the passage quoted from Judge Brewer's opinion, it appears the question was argued, and that, at least as to indemnity lands outside the withdrawal limits on the line of general route, no selection was shown. He would doubtless have made the same finding as to all the indemnity lands, except for his holding as to the lands within such withdrawal that plantiff was entitled to them without selection.

6. *The Proceedings before the Master and his Report.*

The circuit court in its decision directed:

"A decree will therefore be entered in favor of the Northern Pacific Railroad Company as to all lands within its place limits and also within the limits of the withdrawal of October

12, 1870, and dismissing the supplemental bill of the St. Paul, Minneapolis & Manitoba Railway Company, at its costs.

"The case will be referred to a master *to report the lands coming within the limits named.*"

Record, 184–5 (419;) 26 Fed. Rep. 563.

The master was not directed nor was it within his province to ascertain or report what lands had been *selected* by the Northern Pacific Co., still less to receive new evidence of selections to supply the entire want of any evidence on that point.

The proceedings before the master, as reported by him, are in the record, on pages 191–3 (440–447.) He states just what evidence was introduced or offered—all of which was evidence already introduced in the cause.

The plaintiff's counsel then requested him to report on lands within the limits specified by the court, but not included in plaintiff's bill. To this the defendants objected that he should not report on any lands outside plaintiff's place limits, unless shown to have been selected, etc., and not to report on any lands in the second belts unless selection were shown, and also a right to select by reason of losses since July 2, 1864.

"*No further testimony being offered*, the hearing was thereupon closed." Record, 193 (447.)

The master says that no evidence of selection was produced before him *at any hearing.* He was of course at liberty to refer to the evidence already taken in the cause; but, as has been shown, this contained no evidence of selection.

The master then made his report. Not content to keep within the directions of the reference, and report the place lands and such indemnity lands as fall within the limits of the withdrawal of October 12, 1870, and which are found in Schedules B, C, and D, to his Report, in Record 193 (448)–203 (470,) he reports on five classes of lands *not included in the bill of complaint.*

Schedules E, F, G, K, L, Record, 203 (470)–211 (489), 217 (503)–219 (506).

He also reports Schedules H and I, lands within plaintiff's first and second indemnity belts, but not included within the withdrawal of October 12, 1870. Record, 211 (490)–217 (502.)

The master made a "draft report" and served it on counsel. Record, 189, (433–4.)

Counsel made their exceptions, and submitted them to the master, who overruled them.

He refers to the objection to his reporting any indemnity lands without evidence of selection, and says:

"The decision of this court is that the grant to that company (the St. Paul & Pacific) never had any operative force within the limits of the withdrawal of October 12, 1870, and directs a decree in favor of complainant for all lands within its place limits and also within the limits of this withdrawal. All lands, therefore, within this withdrawal, whether falling within the place limits or the indemnity limits of complainant, are covered by the terms of the decision, and I therefore report the same as shown by Schedules C and D above mentioned."

Record 187–8, (428–9.)

Schedules B, C, and D to the report correspond with Schedules B, C, and D, to the decree, B being lands in place, C lands in the first, and D lands in the second, indemnity belts which are also included in the withdrawal.

Upon Schedules C and D and some others, the master says, "are noted in red ink the selections of lands made by the Northern Pacific Railroad Company, as more fully shown by certain lists of selections filed with the master and marked Schedules M, P, and Q, which are here filed in court and referred to as part of this report." Record 188, (431.)

These Schedules M, P, and Q, were never offered in evidence before the master. How he got them does not appear, except that they were "filed" with him.

Whatever they may have contained they were not evidence, because not introduced in evidence. And not being evidence, the master could not found a report on them. And hence so far as his red-ink marks on Schedules D and E are to be taken as findings that the lands marked had been selected, they are, besides being outside the order of reference, wholly without any evidence to warrant them.

And it will be observed that a mere finding that plaintiff "selected" lands would not warrant a decree for it, unless it appeared that such selection *was prior to the selection* by the St. Paul & Pacific Co. or by the state for it. The patent is evidence that such selection for the defendant company was made. And the master's red-ink marks, giving them far more weight than they are entitled to, are perfectly consistent with a selection by the Northern Pacific Co. made years after the selection for the St. Paul & Pacific Co., years after patent issued, years after suit brought, which had been pending nearly 12 years when the master made his report.

> The exceptions to the report are in Record 220–2 (508–518.) The action of the court thereon is in Record 224–5 (529–530.)

The defendants were throughout insisting on the need of selection and the absence of any proof of it.

On this record it is apparent that in the circuit court no attempt was made to prove selections of these lands, and in its decision that court finds, as to all lands which in its opinion required selection, that none had been made. And if the counsel for appellees in this court had been concerned in the conduct of the cause in the circuit court, we are confident that it would not have been claimed here, as it certainly was not claimed there, that any selection of any indemnity lands had been made by plaintiff, unless, in view of the alleged shortage in Minnesota, the location of the road operated as

an appropriation or selection of *all* the lands, or unless a general claim to all lands within its limits was equivalent to a selection.

Conclusion.

It follows that as no selection was made, the decision of this court that no selection was necessary, if an erroneous decision on the facts and evidence of this case, was and is prejudicial to the appellant.

On account of the error of the court hereinbefore set forth, and to the end that equity may be done, and that the court may, upon fuller consideration and with the advantage of oral argument, revise its former opinion, (if revision be right and proper,) your petitioners pray that the court may be pleased to take their suggestions under a careful consideration and grant a rehearing upon the points on which such decision as to indemnity lands was based, and grant such other relief and order as in equity and good conscience may be proper.

S. U. PINNEY,
GEO. B. YOUNG,
Counsel for Appellants.

The undersigned counsel for appellants do certify that the foregoing petition for rehearing is made in good faith and not for the purposes of delay, and that in our opinion the said petition is well founded in the law and in the evidence in said cause.

S. U. PINNEY,
GEO. B. YOUNG,
Counsel for Appellants.

†

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Conclusion.

It follows that as no selection was made, the decision of this court that no selection was necessary, if an erroneous decision on the facts and evidence of this case, was and is prejudicial to the appellant.

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S. U. PINNEY,
GEO. B. YOUNG,
Counsel for Appellants.

The undersigned counsel for appellants do certify that the foregoing petition for rehearing is made in good faith and not for the purposes of delay, and that in our opinion the said petition is well founded in the law and in the evidence in said cause.

S. U. PINNEY,
GEO. B. YOUNG,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 54.

THE ST. PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, THOMAS DENNEY, AND THOMAS W. PEARSALL, TRUSTEES, ETC., AND THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY,

Appellants,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

BRIEF FOR APPELLANTS.

S. U. PINNEY,

Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES.

THE ST. PAUL & PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, THOMAS DENNEY, AND THOMAS W. PEARSON, TRUSTEES, ETC., AND THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellants*,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

} ORIGINAL BILL.

AND

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

} SUPPLEMENTAL BILL IN THE NATURE OF A CROSS BILL.

The Northern Pacific Railroad Company, March 24, 1875, brought its suit in the circuit court for Clay county, Minnesota, against the St. Paul & Pacific Railroad Company, Horace Thompson, George L. Baker and William S. Morehead, trustees, etc., and the Hon. Geo. P. Wilson, attorney general of the state of Minnesota, claiming that the lands described in schedule A, annexed to its complaint, had been improperly and illegally certified to the state of

Minnesota, as enuring to it under the grants made by the acts of congress of March 3, 1857 (11 U. S. Stat., 195),
5 as increased by the act of March 3, 1865 (13 U. S. Stat., 526), and the location of which was in part authorized to be changed, by act of March 3, 1871 (U. S. Stat., 588, printed record 1 to 3), for the benefit of the St. Paul & Pacific Railroad Company; that the Northern Pacific Railroad Company, both at law and in equity, was entitled to have such lands under its grant by act of congress of July 2, 1864 (13 U. S. Stat., 365), extended as to indemnity, by joint resolution of May 31, 1870, (16 U. S. Stat., 370); that
6 by the certification of these lands to the state as aforesaid, the "state of Minnesota has the naked legal title to such lands, . . . "and the Hon. Geo. P. Wilson, attorney general, is made a party defendant to the complaint, as the legal representative of said state, that thereby the state of Minnesota and the governor thereof may have notice of the pendency of the action." P. Rec., 21. These lands had not then been conveyed to the St. Paul & Pacific Railroad Company, but it is alleged that the said company claimed to be
7 entitled to them.

The plaintiff prayed, among other things, that said lands, and each and all of them, and every part thereof, be adjudged, decreed and determined to be the lands of and belonging to the plaintiff, and that it be equitably and legally entitled to have and receive the absolute legal title thereto in fee simple, and that the St. Paul and Pacific Railroad Company is not equitably or legally entitled to any interest therein, etc., and for general relief. P. Rec., 22.

8 These lands had been mortgaged to the defendants, Thompson, Becker and Morehead, as trustees for the holders of $15,000,000 bonds, and upon a suit by the bondholders, and also upon a suit for foreclosure of the mortgage or trust deed, Jesse P. Farley had been appointed receiver

of the St. Paul & Pacific Railroad Company, its land grant, etc., and was in possession. Accordingly he intervened in this suit by petition to protect his interest as such receiver. 9
(P. Rec., 31–35), and April 10, 1875, was made a party defendant thereto. P. Rec., 36.

May 4, 1875, upon petition of Thompson, Becker and Morehead, trustees, and of Jesse P. Farley, receiver, the case was ordered removed to the circuit court of the United States for the district of Minnesota. P. Rec., 37 to 41. And upon filing a copy of the record in that court, the plaintiff, the Northern Pacific Railroad Company, June 21, 1875, filed its bill of complaint therein against the defendants 10
(P. Rec., 43–66), praying substantially the same relief, and upon substantially the same grounds as in and by its complaint in the state court.

June 29, 1875, Jacob S. Wetmore, Thomas Denny and Thomas W. Pearson, having been chosen trustees, etc., in place of Thompson, Becker and Morehead, were substituted as defendants in the place of the latter (P. Rec., 66, 67); and on the 10th of August, 1875, the said Wetmore, Denny and Pearson, and Farley as such receiver, 11
filed their answer to the bill (P. Rec., 68 to 89), to which a replication was filed October 4, 1875.

December 24, 1875, the bill was ordered to be taken as confessed by the defendants, the St. Paul & Pacific Railroad Company, and George P. Wilson, attorney general of the state of Minnesota. P. Rec., 91–93.

The lands in question were not conveyed by the state of Minnesota to the St. Paul & Pacific Railroad Company until long after, namely, February 22, 1877 (P. Rec., 135), but 12
it was stipulated and agreed, June 24, 1878, by the trustees, Wetmore, Denney and Pearson, and Farley, receiver, "that this cause shall proceed to hearing and decree in like manner and with the same effect as if said conveyance and

alienation had been made before the commencement of this suit, and had been set forth or alleged in the bill, or had
13 been set forth and alleged in a supplemental bill filed herein and admitted in an answer thereto by the said defendants, and June 26, 1878, it was ordered accordingly, and that the cause be dismissed as to the defendant, Hon. George P. Wilson, attorney general of the state of Minnesota. P. Rec., 96–98. After considerable testimony had been adduced, proceedings in the cause were suspended for about six years.

In the meantime the $15,000,000 trust deed or mortgage on the road franchises and land grant of the St. Paul &
14 Pacific Railroad Company had been foreclosed, and the mortgaged premises therein sold and conveyed to the St. Paul, Minneapolis & Manitoba Railway Company, June 21, 1879. P. Rec., 98–100. On or about the 18th of January, 1873, a patent was issued to the Northern Pacific Railroad Company for 29,782 acres of land within the disputed limits, caused by the overlapping of the grant to the latter, with the grant to the St. Paul & Pacific Railroad Company, and to which the last named company under its
15 grant claimed title.

April 7, 1884, the St. Paul, Minneapolis & Manitoba Railway Company as such purchaser and as claimant under the grant of the St. Paul & Pacific Railroad Company, presented its petition to be made a party defendant to the original suit with leave to answer the bill of complaint therein to defend its rights as such purchaser, and to file a cross-bill against the said complainant, the Northern Pacific Railroad Company, in respect to the said 29,782 acres so
16 patented to it, and claimed by the said Manitoba Company, etc., and for such further or other relief, and that the original bill be dismissed as to Farley, the receiver (P. Rec., 98–105), and thereupon on May 3, 1884, the court ordered "that the Manitoba Company have leave to become a party

to the said original suit by supplemental bill for the protection of its rights and interests involved in the suit, to be filed on, etc., and such proceedings be had thereon as shall 17
be in accordance with equity; that the prayer to become a party defendant, with leave to answer and to have the original bill dismissed as to Jesse P. Farley, receiver, be denied." P. Rec., 107. At this time Farley had really been discharged from his receivership.

May 28, 1884, the Manitoba Company filed in said cause its supplemental bill in the nature of a cross-bill, in which it insisted upon a conveyance from the Northern Pacific Railway Company of the 29,782 acres so patented as aforesaid, 18
and insisted on its title to all and singular the lands theretofore patented to the St. Paul & Pacific Railroad Company. P. Rec., 107–145.

The Northern Pacific Railroad Company answered this bill August 18, 1884 (P. Rec., 146–169), and a replication thereto was filed September 1, 1884. The case was heard in September term, 1885, upon pleadings and proof.

The following statement of the claims of the parties and of the legislature, congressional and state, and other facts in 19
evidence, in chronological order, though more elaborate than may be necessary, will, it is hoped, conduce to a ready and proper understanding of their merits.

Among the earliest land grants for railroads was the one under which the St. Paul, Minneapolis & Manitoba Company claims title, made by act of congress March 3, 1857 (11 U. S. Stat., 195), for *a system* of railways in the territory and future state of Minnesota, the material portions of which are as follows: 20

"Sec. 1. That there be and is hereby granted to the territory of Minnesota for the purpose of aiding in the construction of railroads from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake

and the mouth of Sioux Wood river, with a branch *via* St. Cloud and Crow Wing to the navigable waters of the Red
21 River of the North, at such point as the legislature of said territory may determine; from St. Paul and from St. Anthony *via* Minneapolis to a convenient point of junction west of the Mississippi to the southern boundary of the territory, in the direction of the mouth of the Big Sioux river, with a branch *via* Farribault, to the north line of the state of Iowa, west of range sixteen; from Winona *via* St. Peter to a point on the Big Sioux river, south of the forty-fifth parallel of north latitude; also from La Crescent *via* Target lake up the valley of the Root river to a point of junction with the last mentioned road, east of range sixteen; every alternate section of land designated by odd numbers for six
22 sections in width on each side of each of said roads and branches; but in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said territory or future state to select, subject to the approval of the secretary of the interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of section as shall be equal to such lands as the United States have sold or otherwise appropriated,
23 or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with sections and parts of sections designated by odd numbers, as aforesaid, and appropriated as aforesaid) shall be held by the territory or future state of Minnesota, for the use and purpose aforesaid. Provided, that the land to be so located shall in no case be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said lines or branches; Provided, further, that the said lands hereby granted for and on
24 account of said roads and branches severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever; and Provided further, that any and all lands heretofore reserved to

the United States by any act of congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement, or for any other 25
purpose whatsoever, be, and the same are, hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroad, and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the president of the United States.

"Sec. 3. *And be it further enacted*, that the said lands hereby granted to the said territory or future state shall be subject to the future disposal of the legislature thereof, for the purposes herein expressed, and no other; and the said railroads and branches shall be and remain public highways for the use of the government of the United States, free 26
from toll or other charge upon the transportation of any property or troops of the United States.

"Sec. 4. *And be it further enacted*, that the land hereby granted to said territory or future state shall be disposed of by said territory or future state only in the manner following, that is to say: That a quantity of land, not exceeding one hundred and twenty sections for each of said roads or branches, and included within a continuous length of twenty miles of each of said roads or branches, may be sold; and when the governor of said territory or future state shall certify to the secretary of the interior that any twenty con- 27
tinuous miles of said roads or branches is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections, for each of said roads and branches, having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads or branches, may be sold; and so from time to time until such roads and branches are completed; and if any of said roads or branches is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

"Sec. 6. *And be it further enacted*, that in case any lands on the line of said roads or branches are within any Indian 28
territory, no title to the same shall accrue, nor shall the same be entered upon by the authority of said territory or state until the Indian title to the same shall have been extinguished."

This *system* consisted of four roads, two of which had greatly extended branches.

29 A corporation known as the Minnesota & Pacific Railroad Company was created by act of the territorial legislature May 22, 1857 (Special Laws of Minnesota, 1857, 4–16; P. Rec., 347), with ample and elaborate powers and franchises to locate, build and operate a railroad in conformity with the act of congress, from Stillwater by way of St. Paul and St. Anthony to the town of Breckenridge on the Sioux Wood river, with a *branch* from St. Anthony *via* Anoka, St. Cloud and Crow Wing to St. Vincent on the
30 Pembina river. The provisions of this act are set out in the pleadings and admitted by the answer. See Sup. Bill, P. Rec., 109.

This litigation is concerning lands pertaining to the *branch road to St. Vincent.*

The Minnesota & Pacific Company located the entire main line of its road and that portion of the branch line from St. Anthony *via* Anoka and St. Cloud as far as Crow Wing, as early as November 12, 1857, and maps of such locations
31 were duly filed in the general land office in December of that year, having been approved by the secretary of the interior. This company commenced the work of constructing its road and branch, and received certain state railroad bonds issued by the state and secured by a deed of trust to the state, executed by the company, upon its rights, franchises and property, all of which was done under acts of the state legislature of August 12 and 25, 1858, and March 6, 1860. P. Rec., 111. Default was made in the conditions
32 of the trust deed, and a foreclosure sale followed June 23, 1860, at which the governor bid in the franchises and property sold in the name of and for the state, and a conveyance was made to the state accordingly October 16, 1860.

The legislature, March 10, 1862 (Laws of Minnesota,

1862, 247, P. Rec., 112, 349), passed an act to facilitate the construction of the Minnesota & Pacific Railroad, and to amend and continue the act of incorporation relating to it, 33
by which the rights, franchises, property and interests so sold and conveyed to the state were granted and transferred to certain persons therein named, their successors, etc., who were thereby created a body politic and corporate by the name of the St. Paul & Pacific Railroad Company, with the rights, franchises, etc., which formerly belonged to the Minnesota & Pacific Company, and with certain other powers and privileges enumerated in the act to enable such new company to build the main and branch roads and obtain the 34
lands granted for that purpose (P. Rec., 305), and this is admitted by the answer.

On the 12th day of July, 1862 (12 U. S., Stat., 624), congress passed the following joint resolution:

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled:* That in lieu of that part of the railroad grant to Minnesota Territory by the act of congress, approved third March, eighteen hundred and fifty-seven, which extends northwesterly from the intersection of the tenth standard parallel with 35
the fourth guide meridian, there shall be granted to the state of Minnesota the alternate sections within six mile limits of such new branch line of route as the authorities of the state may designate, having its southwestern terminus at any point on the existing line, between the falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen mile limits thereof, provided this resolution shall take effect from the filing in the general land office of the acceptance by the authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant, as authorized by the said act 36
third March, eighteen hundred and fifty-seven, being by said acceptance disincumbered of the railroad grant, shall be dealt with as other public lands of the United States."

The map showing the lateral limits of the grant to the

Northern Pacific Company, put in evidence by it (Complts. Ex., 6), shows that the point of intersection of the tenth
37 standard parallel with the fourth guide meridian, lies four miles north of the northern boundary of the forty mile limits, fourteen miles north of the thirty mile limits, and twenty-four miles north of the twenty mile limits of the grant afterwards made to the complainant by act of congress of July 2, 1864, and joint resolution of May 31, 1870; and the evidence shows that such point of intersection is at the northwest corner of town 140, range 32. *It therefore clearly appears that notwithstanding the vacation of the part of the grant*
38 *north of said point of intersection, yet the grant under which the defendant company claims, has always existed across the entire land limits of the grant subsequently made to the complainant, as its road has been located and constructed, and there is not and cannot be any contention to the contrary.* At the time that company fixed its *general* route, as well as its *alleged* definite one, the part of the grant vacated by said joint resolution *had been restored and enlarged*, as hereinafter shown, by the act of March 3, 1865, to ten sections per
39 mile, *and it became and was a physical impossibility for the Northern Pacific Company to locate its line from Lake Superior westward, through Minnesota, without crossing our branch line and grant to St. Vincent*, but by bending the line of its road as far south as St. Anthony, and nearly one hundred and thirty miles south of its present location; and even then, one-half of its lateral land limits, at that point, would have been in conflict with the land limits of the grant for our branch line, commonly called the St. Vincent
40 Extension.

We submit that this important point in the construction and adjustment of these grants should be constantly kept in mind.

The point of intersection mentioned in this joint resolu-

tion was fixed as aforesaid, "because the committee on public lands knew of no natural object or town which could be named as a point where the vacation should commence, that 41
country being then unsurveyed. They estimated that from that point to St. Vincent was about the distance from St. Paul or Crow Wing, or some intermediate point, to the headwaters of Lake Superior." Testimony of Edmund Rice, Defendants' Evidence, P. Rec., 381, 384, 385, 463, *et seq.*

By an act of the legislature of Minnesota, approved March 6, 1863, Laws of Minnesota, 1863, 147, P. Rec., 352, the provisions of the joint resolution of congress of July 42
12, 1862, were accepted, and the St. Paul & Pacific Railroad Company was authorized to survey, locate, build and operate the branch so provided for, "Having its southwestern terminus at or above some point opposite St. Cloud, upon the existing branch line of the St. Paul & Pacific Railroad, and extending from thence in a northeasterly direction, by such route as they may select, to the navigable waters of Lake Superior, at or near Pigeon river, by way of Duluth," and it was to have the lands granted for that 43
purpose, and its franchises were extended, to enable it to locate, build and operate such road.

"Provided the grants and franchises hereby conferred or extended are made with the proviso, and upon the express condition, that they shall in no wise inure to the line of road now located or constructed, or to be located or constructed hereafter, under the powers of the present act of incorporation of the St. Paul & Pacific Railroad Company; and also that no act or deed of said company shall be competent to embarrass or incumber the grants or franchises hereby 44
made, for any purpose connected with the line or lines of road contemplated by the existing charter of the railroad company.

"Sec. 3. And it is further provided that, if the said St. Paul & Pacific Railroad Company shall not, within two

years from the 8th day of March, 1863, construct and equip for business at least twenty miles of said new branch road
45 from the point of divergence heretofore designated on the Mississippi; and also grade and prepare for the laying of the iron at least twenty miles within the state of Minnesota, from the navigable waters on Lake Superior, beginning not further down on said lake than at or near Minnesota Point, and thence by the most feasible route in said state, in the direction of the southwestern terminus, and shall not, within five years from the passage of this act, complete said new branch from the Mississippi, thence to the navigable waters of Lake Superior, in said state of Minnesota, then all the rights, franchises, lands, property, interests and immunities hereby granted, pertaining to the unfinished portions of said
46 new branch road shall be forfeited to the state, and shall not inure in any way to the St. Paul & Pacific Railroad Company, but shall be forfeited to and retained by the state of Minnesota for future disposition."

A copy of this act, duly certified, was filed by the governor in the general land office at Washington, February 26, 1864.

At the time of the passage of the joint resolution of July 12, 1862, and of the act above mentioned, the St. Paul & Pacific Railroad Company had not made any location of its
47 said branch line to St. Vincent, beyond Crow Wing, and has not since made any from Crow Wing or elsewhere in the direction of said point of intersection specified in said joint resolution. This is conceded by the pleadings.

By an act amending the charter of the St. Paul & Pacific Railroad Company, approved February 6, 1864, Laws of Minnesota, 1864, 174; P. Rec., 114, it was among other things enacted as follows, to wit:

"Sec. 6. The St. Paul & Pacific Railroad Company
48 shall have *the right to re-locate the lines of its road and branches* so as to run and construct the main line from Saint Anthony by way of Minneapolis, to any point between the foot of Big Stone Lake to the mouth of the Sioux Wood river, and the branch from St. Anthony to the Red River of the North, so as to run and construct the same from some

point at or near St. Cloud to any point in the international boundary near the Red River of the North, and it shall not be required of the said company to construct or maintain the said branch road to or by the way of Crow Wing. 49

"Sec. 7. The St. Paul & Pacific Railroad Company shall complete those portions of their road from Stillwater to St. Paul, and from St. Anthony by way of Minneapolis, westwardly to the distance of twenty miles, within two years, and the remaining portion of the main line, and that part of the branch line from Saint Cloud to the Red River of the North, within five years, *and there shall be no forfeiture of any of the lands*, property, privileges, rights or franchises of the said company for a failure to complete the same or any part thereof prior to the times above specified.

"Sec. 8. The said St. Paul & Pacific Railroad Company 50 is hereby authorized and empowered to extend, survey, locate, construct, maintain and operate its road from some point at or above Saint Cloud to the westerly end of Lake Superior; and for the purpose of extending, locating, constructing and operating the same, the said company shall have and may exercise all the rights, immunities, privileges and franchises conferred in and by its charter, and which are applicable to any other portion of its road or branch road."

Soon after the passage of said act, the owners of special or preferred stock, which had been issued by the St. Paul 51 & Pacific Railroad Company, on the branch line from St. Paul to Watab, a point north of St. Cloud, and also on the main line from St. Paul to Breckenridge, under and in pursuance of said act of the legislature of Minnesota of February 6, 1864, had organized a new corporation, known and called the "First Division of the St. Paul & Pacific Railroad Company;" and it thereby became the owner of the main line, and of that part of the branch line south of Watab, with the rights, property and franchises belonging to or connected 52 therewith. The record of this organization was filed in the office of the secretary of state May 4, 1864, and the organization was approved and confirmed by an act entitled (Laws of Minnesota, 1866, —), "An act to aid and facilitate the com-

pletion of the St. Paul & Pacific Railroad and branches," approved February 6, 1866, as is admitted by the pleadings.

53 By an act of the legislature of the state of Minnesota (Laws of Minnesota, 1864, 177, P. Rec., 354), entitled "An act to extend the time for the construction of the branch road of the St. Paul & Pacific Railroad Company," approved March 4, 1864, it was enacted as follows:

"Section 1. The St. Paul & Pacific Rrilroad Company shall have one year in addition to the times respectively mentioned and prescribed in the act entitled 'An act to authorize the St. Paul & Pacific Railroad Company to construct a branch road to Lake Superior,' wherein to con-
54 struct, grade and equip the said branch road, and the several portions thereof specified in said act; and there shall be no forfeiture of any of the lands, property, privileges, rights or franchises of said company for a failure to complete said branch road, or any portion thereof, prior to the expiration of one year from the times respectively provided in and by said act; provided, nevertheless, that the said company shall, within eight months from the passage of this act, accept the terms and provisions of said act of March 6, 1863, and of the joint resolution of the congress of the United States, approved July 12, 1862, entitled 'A joint resolution
55 authorizing the state of Minnesota to change the line of certain branch railroads in said state, and for other purposes,' or this act shall be void and of no effect."

On the 28th day of May, 1864, the board of directors of the St. Paul & Pacific Railroad Company passed the following resolution:

"Resolved by the board of directors of the St. Paul & Pacific Railroad Company, that the terms, conditions and provisions of the joint resolution of the congress of the United States, approved July 2, 1862, entitled 'A joint resolution authorizing the state of Minnesota to change the
56 line of certain branch railroads in said state, and for other purposes, and also the terms, conditions and provisions of the act of the legislature of the state of Minnesota, approved March 6, 1863, entitled 'An act to authorize the St. Paul & Pacific Railroad Company to construct a branch road to Lake Superior,' and also the terms, conditions and pro-

visions of the act of the legislature of the state of Minnesota, approved March 4, 1864, entitled 'An act to extend the time for the construction of the branch road of the St. Paul & Pacific Railroad Company,' be, and the same, and each and every one of them, are hereby approved, accepted and assented to by the St. Paul & Pacific Railroad Company; and the president and secretary of this company are hereby directed to transmit a duly certified copy of this resolution to the government of the state." 57

The above resolution was duly transmitted to the governor of Minnesota June 18, 1864.

On the 2d day of July, 1864, the charter of the Northern Pacific Railroad Company was passed by congress, and at 58 that date the condition of affairs in respect to the lines of road which the St. Paul & Pacific Railroad Company had been authorized to build, under the act of congress, and joint resolution of July 12, 1862, and subsequent state legislation, was, as thus appears, in substance as follows:

1. That part of the grant for the branch to St. Vincent, under the act of March 3, 1857, northwest of the intersection of the tenth standard parallel, with the fourth guide meridian, had been vacated, and in lieu of it the grant for 59 such new branch line as the authorities of the state might designate, having its southwestern terminus at any point on the existing line between St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, had been made; and by state legislation, act of March 6, 1863, the southwestern terminus was to be at or above some point opposite or above the town of St. Cloud, on the existing branch line of the St. Paul & Pacific Railroad, and to run to the mouth of Pigeon river, on Lake 60 Superior, *via* Duluth.

2. The St. Paul & Pacific Company had obtained the right to relocate its branch line, "so as to run and construct the same from some point at or near St. Cloud to any

point in the international boundary near Red River of the North, and it was not to be required to construct or main-
61 tain the said branch road to or by the way of Crow Wing." This gave it the option to build on either route.

3. The two branches and the right to earn the lands pertaining to them remained with the St. Paul & Pacific Company, and in the mean time congress had, May 5, 1864, made a grant to Minnesota to aid in the construction of a railroad in that state from St. Paul to the head of Lake Superior, of every alternate section by odd numbers to the amount of five alternate sections on each side of the line
62 thereof. 13 U. S. Stat., 64.

By an act of congress amendatory of said act passed July 13, 1866 (vol. 14, 93), it was provided:

"That in case it shall appear, when the line of the Lake Superior & Mississippi Railroad is definitely located, that the quantity of land intended to be granted by the said act in aid of the construction of said road shall be deficient by reason of the line thereof running near the boundary line of the said state of Minnesota, the said company shall be en-
63 titled to take from other public lands of the United States within thirty miles of the west line of said road such an amount of lands as shall make up such deficiency. *Provided*, that the same shall be taken in alternate odd sections as provided for in said act."

4. The St. Paul & Pacific Railroad Company, First Division, owned and was carrying on the enterprise of building the main line from St. Paul to Breckenridge, and so much of the branch as extended from St. Paul to Watab, about seven miles north of St. Cloud, and the state had
64 extended the time for building the roads according to these schemes.

While the bill for the grant of the Northern Pacific Railroad Company was pending in congress, the following prop-

ositions were pending before congress in relation to land grants in aid of railroads in Minnesota, namely:

1. An amendment to the said joint resolution of July 12, 65
1862, offered by Mr. Donnelly April 28, 1864. Cong. Globe, '63, '64, page 1943.

2. A bill for an additional grant of lands to the state of Minnesota, to aid in building the main and branch lines of the St. Paul & Pacific Railroad Company, introduced by Mr. Donnelly May 23, 1864. Cong. Globe for '63, '64, page 2426.

3. Another bill to make an additional grant of lands to Minnesota to aid in the construction of railroads, introduced 66
by Mr. Windom June 2, 1864. Cong. Globe, '63, '64, page 2690.

All these measures had been referred to the committee on Public Lands.

The bill for the grant to the Northern Pacific Company was introduced May 23, 1864, and referred to the same committee. Cong. Globe, '63, '64, 2427, and it was reported back and passed May 31, 1864, id., 2612, but in a materially different form from the act as finally passed. 67

In the senate it was reported back by the committee on Public Lands June 27 (Cong. Globe, '63, '64, 3290), with very many amendments to the third section, which we deem it material to notice, and so print the original text of the material parts of the grant as amended, side by side with the original text of that part of the bill, the amendments being in italics, except as to the proviso:

68

AS INTRODUCED.

"Every alternate section of land, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever, on the line thereof, the United States have full title, and free from pre-emption or other claims or rights, at the time the line of said road is definitely fixed; and whenever, prior to said time, any of said sections or parts of sections shall have been sold or pre-empted, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route shall be found upon the same line upon which any railroad route within the state of Minnesota to aid in the construction of which lands have been heretofore granted by the United States as far as the routes are upon the general line, the amount of land now granted shall be deducted from the amount granted by this act."

AS PASSED.

"Every alternate section of *public* land, *not mineral*, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever, on the line thereof, the United States have full title, *not reserved, sold, granted or otherwise appropriated*, and free from pre-emption or other claims or rights, at the time the line of said road is definitely fixed, *and a plat thereof filed in the office of the commissioner of the general land office;* and whenever, prior to said time, any of said sections or parts of sections shall have been *granted*, sold, *reserved, occupied by homestead settlers*, or pre-empted *or otherwise disposed of*, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, *and designated by odd numbers*, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

These, with several other amendments, were adopted, and so the act passed the senate. The house refused to concur therein, and the senate refused to recede, and a committee

of conference was appointed. This committee reported in favor of all the amendments except a few not material to notice, and this report was agreed to in both houses, and so 73
the bill passed. At the time it passed the senate, Senator Ramsay tried to get an enlargement of the Minnesota grants incorporated in the bill, but they met with opposition, as embarrassing a national measure with one of a local nature, and therefore his proposition was lost (see Cong. Globe, '63, 64, part 4, pages 3388, 3360, 3479); but this measure prevailed eight months later.

The material portions of this act of congress are as follows, to wit: 74

"Sec. 3. *And be it further enacted*, that there be and hereby is granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of the said railway, every alternate section of public lands, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through 75
the territories of the United States, and ten alternate sections of land per mile on each side of said railroad, whenever it passes through any state, and whenever on the line thereof, the United States *have full title, not reserved, sold, granted or otherwise appropriated*, and free from pre-emption or *other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the general land office;* and whenever prior to said time, any of said sections, or parts of sections, shall have been *granted*, sold, reserved, occupied by homestead settlers, or pre-empted *or otherwise disposed of*, other lands shall be selected by said company in lieu thereof, under the 76
direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections; Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been

heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act; provided further, that the railroad company receiving the previous grant of land may assign their interest to the said Northern Pacific Railroad Company, or may consolidate, confederate or associate with said company upon the terms mentioned in the first section of this act; provided further, that all mineral lands be, and the same are, hereby excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd numbered sections nearest to the line of said road, and within fifty miles thereof, may be selected as above provided; and provided further, that the word 'mineral,' where it occurs in this act, shall not be held to include iron and coal; and provided further, that no money shall be drawn from the treasury of the United States to aid in the construction of said Northern Pacific railroad.

"Sec. 4. *And be it further enacted*, that whenever said Northern Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the president of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the president of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situate opposite to and coterminus with, said completed section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the president of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid: Provided, that not more than ten sections of land per mile, as said road shall shall be completed, shall be conveyed to said company for all that part of said railroad lying east of the western boundary of the

state of Minnesota, until the whole of said railroad shall be finished and in good running order as a first-class railroad, from the place of beginning on Lake Superior to the western boundary of Minnesota: Provided, also, that lands shall not be granted under the provisions of this act on account of any railroad, or part thereof, constructed at the date of the passage of this act." 81

"Sec. 6. *And be it further enacted*, that the president of the United States shall cause the lands to be surveyed for forty miles in width, on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land *hereby granted* shall not be liable to *sale or entry, or pre-emption*, before or after they are surveyed, except by said company, as provided in this act; but 82 the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same hereby are, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company; and the reserved alternate sections shall not be sold by the government at a price less than $2.50 per acre when offered for sale."

"Sec. 8. *And be it further enacted*, that each and every grant, right and privilege herein are so made and given to and accepted by said Northern Pacific Railroad Company 83 upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the president, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish and complete the whole road by the 4th day of July, A. D. 1876."

Section 18 required "That said Northern Pacific Railroad Company shall obtain the consent of the legislature of any state through which any portion of said railroad line 84 may pass, previous to commencing the construction thereof; but said company may have the right to put on engineers and survey the route before obtaining the consent of the legislature;" and by section 19 congress reserved the right

to "at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend
85 or repeal this act."

On the 14th day of November, 1864, the directors of the St. Paul & Pacific Company authorized the issue of (thirty thousand shares) $3,000,000 of special and preferred stock upon that portion of the branch road of the company and the land grant pertaining thereto from Watab to St. Vincent, to be delivered to the president, then Edmund Rice, to be negotiated and used by him as he should deem best calculated to promote the interests of the company and se-
86 cure the construction of said portion of road. P. Rec., 412, 381.

By act of May 7, 1866 (14 U. S. Stat., 355), "the time for commencing and completing the Northern Pacific Railroad and all its several sections is extended for the term of two years." By act of July 1, 1868, all its rights were made to be subject to the condition that it "commence the work on said road within two years from and after the 2d day of July, 1868, and shall complete not less than one
87 hundred miles per year after the second year thereafter;" and by act of July 15, 1870 (16 U. S. Stat., 305), it was provided "That before any land granted to said company shall be conveyed to any party entitled thereto under any of the acts incorporating or relating to said company, there shall first be paid into the treasury of the United States the cost of surveying, selecting and arranging the same, by the said company or party in interest."

By a joint resolution of congress of May 31, 1870, it was
88 provided, among other things, that:

"In the event of there not being in any state or territory in which said main line or branch may be located, *at the time of the final location* thereof, the amount of lands per mile granted by congress to said company, within the limits

prescribed by its charter, then said company shall be entitled, under the directions of the secretary of the interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such state or territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of 1864, to the amount of the lands *that have been granted*, sold, reserved, occupied by homestead settlers, pre-empted *or otherwise disposed of subsequent to the passage of the act of July 2, 1864.* . . .

"Sec. 2. And be it further resolved, that congress may at any time alter or amend this joint resolution, having due regard to the rights of said company, and any other parties."

In December of 1864 the St. Paul & Pacific Railroad Company entered into negotiations with capitalists in the interests of the Hudson Bay Company for the construction of portions of its road, including the branch to St. Vincent, and it was proposed, in aid of that enterprise, to try to get the grant fully restored to St. Vincent, to the extent that it had been vacated by the joint resolution of July 12, 1862, but to get it increased to ten sections per mile. P. Rec., 382; O. Rec., 825, 827. And in anticipation of such congressional legislation, and in furtherance of the enterprise, March 2, 1865, the legislature of Minnesota passed an act as follows, to wit:

"Sec. 1. That the time for the grading and completion of the respective portions of the line of railroad of the St. Paul & Pacific Railroad Company, as now fixed by law, be extended for the period of two years, and that all the rights, privileges, franchises and lands conferred by act of the legislature of the state of Minnesota, approved March 10, 1862, be restored, released and granted to the said company, free and clear of all claim or lien of the said state thereto; and the said company shall have the right and power to extend and construct said road from Winona to La Crescent; provided, and this act is upon the express condition, that the said company shall complete and equip

that portion of the road from Elk river to St. Cloud, with the cars running thereon, on or before the 1st day of Sep-
93 tember in the year 1866, and from thence in a northerly direction to St. Vincent, on the international boundary line, within the time limited by law; also, that said company shall build that portion of said road heretofore known as the St. Paul & Winona branch, by the way of and through the following cities and villages, to wit: Hastings, Red Wing, Lake City, Wabasha and Minneiska.

"Sec. 2. Any and all *additional grants of land made prior to the passage of this act, or which may hereafter be made* by the congress of the United States, to the state of Minnesota, for the purpose of aiding in the construction of the lines of railroad or any portion of them, authorized to
94 be constructed by the St. Paul & Pacific Railroad Company, shall enure to the benefit of said company; *and said lands, and the present and future interest of the state in or to them*, are hereby granted and assigned unto the said company upon the same terms and conditions as the lands heretofore granted for the same purpose, together with the conditions contained in the said act of congress donating the same. And the title of all lands heretofore *or hereafter granted* by the congress of the United States to the state of Minnesota, for the purposes aforesaid, shall vest in said company at the time and upon the terms prescribed by said act of congress
95 making the grant; and it shall be the duty of the governor on behalf of the state to convey to said company the lands so granted according to the terms and conditions contained in the act or acts aforesaid.

"Sec. 3. Nothing contained in any act or law shall be so construed or held as to prohibit in the future the St. Paul & Pacific Railroad Company from creating and issuing any bonds, mortgages, deeds of trust or other securities or liens upon the whole of said roads and branches, and the lands appertaining thereto, or so much thereof as they may deem meet or expedient as one consolidated line.

"Sec. 4. Any or all of the directors of the St. Paul &
96 Pacific Railroad Company may be citizens or subjects of any foreign country.

"And the directors of said company may change the name of said company to that of the Winona. St. Paul & Pacific Railroad Company, or Railway Company, if they shall deem it fit and proper so to do.

"This act shall take effect from and after its passage; and this and all acts relating to the St. Paul & Pacific Railroad Company, and to the lines authorized to be constructed by them, are hereby declared to be public acts." 97

The complainant company accepted said act by resolution passed March 14, 1865, as follows:

"*Resolved*, By the board of directors of the St. Paul & Pacific Railroad Company, that the act of the legislature of the state of Minnesota, entitled 'An act to aid and facilitate the completion of the St. Paul & Pacific Railroad and branches,' approved March 2, 1865, and the act of the legislature of the state of Minnesota, entitled 'An act in relation to the taxation of lands granted to the St. Paul & Pacific Railroad Company,' approved March 4, 1865; and the terms and provisions of the same and each of them be, and they hereby are, accepted and adopted by the St. Paul & Pacific Railroad Company; and be it further 98

"*Resolved*, That the executive officers of this company be, and they are hereby, directed to file in the office of the secretary of state a certified copy of the foregoing resolutions, as a notification of the acceptance by this company of said acts."

At the time of the passage of the aforesaid act of March 2, 1865, congress had already passed an act, which was duly approved on the next day, March 3, 1865, entitled "An act extending the time for the completion of certain railroads in the states of Minnesota and Iowa, and for other purposes," and which said act, among other things, provides as follows: 99

"Sec. 1. That the quantity of lands granted to the state of Minnesota to aid in the construction of certain railroads in said state, as indicated in the first section of an act entitled 'An act making a grant of land to the territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands in alternate sections to the state of Alabama, to aid in the construction of a certain railroad in said state,' approved March 3, 1857, shall be *increased to ten sections* per mile for each of said railroads and branches, subject to any and all limita- 100

tions contained in said act and subsequent acts as hereinafter provided.

101 "Sec. 2. *And be it further enacted*, that the first proviso in the first section of the act aforesaid shall be so amended as to read as follows, to wit: *Provided*, that the land to be so located shall in no case be *further than twenty* miles from the lines of said roads and branches to aid in the construction of each of which said grant is made; and said lands granted shall in all cases be indicated by the secretary of the interior.

"Sec. 3. *And be it further enacted*, that any and all lands heretofore reserved to the United States by any act of congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement
102 or other purpose whatever, be, and the same are hereby, reserved and excepted from the operations of this act, except so far as may be found necessary to locate the route of said road through such reserved lands, in which case the right of way shall be granted, subject to the approval of the president of the United States: Provided further, that any lands which may have been granted to the territory or state of Minnesota, for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension of said grant or grants, shall be deducted from the full quantity of lands hereby granted, and that any
103 lands which may have been so granted shall be strictly applied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law.

"Sec. 4. *And be it further enacted*, that the sections and parts of sections of land, which by said acts and this grant shall remain to the United States, *within ten miles on each side* of said roads and branches, shall not be sold for less than double the minimum price of public lands when sold," etc., etc.

"Sec. 5. *And be it further enacted*, that the lands hereby granted shall be subject to the disposal of the legislature of the state of Minnesota, for the purposes aforesaid, and no
104 other. And the said railroads and branches shall be and remain public highways for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

"Sec. 6. *And be it further enacted*, that the lands hereby and heretofore granted to said territory or state of Min-

nesota shall be disposed of by the said state for the purposes aforesaid only, and in manner following, namely: When the governor of said state shall certify to the secretary of the 105
interior that any section of ten consecutive miles of said road is completed, in a good, substantial and workmanlike manner, as a first-class railroad, and the said secretary shall be satisfied that the said state has complied in good faith with this requirement, the said secretary of the interior shall issue to said state patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situate opposite to, and within a limit of twenty miles of, the line of said section of road thus completed, extending along the whole length of said completed section of ten miles of road, and no further. And when the governor of said state shall certify to the secretary of the interior, and the secretary 106
shall be satisfied, that another section of said road, ten consecutive miles in extent, connecting with the preceding section or with some other first-class railroad which may be at the time in successful operation, is completed as aforesaid, the said secretary of the interior shall issue to said state patents for all the lands granted and situate opposite to and within the limits of twenty miles of the line of said completed section of road or roads, and extending the length of said section, and no further, not exceeding ten sections of land per mile for all that part of said road thus completed, under the provisions of this act and the act to which this is an 107
amendment; and so, from time to time, until said roads and branches are completed. And when the governor of said state shall so certify, and the secretary of the interior shall be satisfied, that the whole of any one of said roads and branches is completed in a good, substantial and workmanlike manner, as a first-class railroad, the said secretary of the interior shall issue to the said state patents to all the remaining lands granted for and on account of said completed roads and branches in this act, situated within the said limits of twenty miles from the line thereof, throughout the entire length of said roads and branches; provided that no land shall be granted or conveyed to said state under the pro- 108
visions of this act on account of the construction of any railroad or part thereof that has been constructed under the provisions of any other act at the date of the passage of this act, and adopted as a part of the line of railroad provided for in this act; and provided, that nothing herein contained

shall interfere with any existing rights acquired under any law of congress heretofore enacted, making grants of lands
109 to the state of Minnesota to aid in the construction of railroads; and provided further, that said lands granted by this or prior acts shall not in any manner be disposed of except as the same are patented under the provisions of this act: and should the state fail to complete any one of said roads or branches within eight years after the passage of this act, then the said lands undisposed of as aforesaid, granted on account of said road or branches, shall revert to the United States.

"Sec. 7. *And be it further enacted*, that as soon as the governor of said state of Minnesota shall file or cause to be filed, *with the secretary of the interior*, maps designating
110 the routes of said roads and branches, then it shall be the duty of the secretary of the interior *to withdraw from market the lands embraced within the provisions of this act.*

"Sec. 9. *And be it further enacted*, that the provisions of this act shall also be construed so as to apply and extend *to that portion of the line authorized to be vacated* by the joint resolution approved July 12, 1862, entitled 'A joint resolution authorizing the state of Minnesota to change the line of certain branch railroads in said state, and for other purposes,' notwithstanding the vacation thereof by said state, *as though said joint resolution had not passed, and also to the*
111 *line adopted by said state in lieu of the portion of the line so vacated.*"

The bill for the last act was pending in congress while the bill for the last mentioned act of the legislature of Minnesota of March 2, 1865, was pending and in progress before that body. The bill before congress (H. of R., 761) was reported February 14, 1865, passed by the house February 16; was passed as amended by the senate February 28, and the amendments were concurred in by the house March 3,
112 and on that day it was signed by the president. P. Rec., 490–501. The bill for the state act was introduced in the house February 21, 1865, and passed on the 24th of the same month; was passed in the senate March 1, with an amendment in which the house concurred on the same day

(P. Rec., 458–461), and the legislature of Minnesota had memorialized congress January 23, 1865, for the increase of grant and extension of time to build, etc. (P. Rec., 463–464, 113
501–505; Evidence of Edmund Rice, pages 11 and 12); showing that the pendency of the bill in congress was well known and understood in the Minnesota legislature, of which he was a member.

At this time in the history of the affairs of the St. Paul & Pacific Railroad Company, congress changed the method of vesting the title to the lands granted in aid of railroads to Minnesota, by act of July 13, 1866. 14 U. S. Stat., 97.

"Sec. 3. *And be it further enacted*, That all the lands 114
heretofore granted to the territory or state of Minnesota to aid in the construction of railroads *shall be certified to said state by the secretary of the interior*, from time to time, whenever any of said roads *shall be definitely located*, and shall be disposed of by said state in the manner and upon the conditions provided in the particular act granting the same, as modified by the provisions of this act. *Provided*, that when the original quantity granted to aid in the construction of any road has been increased, the quantity authorized to be sold from time to time shall be increased correspondingly. *And provided further*, that on the completion 115
of any ten miles of road, the state may sell one-half the quantity of lands which said state is authorized to dispose of on the completion of twenty miles.

"Sec. 4. *And be it further enacted*, That the lands granted by any act of congress to the state of Minnesota, to aid in the construction of railroads in said state, specifically *lying in place*, on any division of ten miles of road, shall not be disposed of until the road shall be completed through and coterminous with the same. *Provided, however*, that this provision *shall not extend to any lands* authorized to be taken *to make up deficiencies*.

"Sec. 5. *And be it further enacted*, That so much of 116
any act as conflicts with the provisions of this act is hereby repealed."

This provision has remained in force ever since July 13, 1866, governing the disposition of the grants to Minnesota.

In the year 1867 the Chicago & Northwestern Railway Company purchased the stock of the St. Paul & Pacific
117 Company, and in 1868 commenced the construction of its branch from Winona to St. Paul, and expended a considerable sum thereon with the view of building the line to St. Vincent. This appears from the evidence of the president of the latter company, Edmund Rice; showing that the said company had been steadily pursuing the purpose of building its roads and had not in any wise abandoned the same. During the year 1869 the latter company, in furtherance of its scheme to build its road to St. Vincent, had caused a survey
118 and location to be made of a line extending from Crow Wing in a northwesterly direction as far as town 142, passing in the vicinity of Rush or Otter Tail Lake; that point being as far north as the public surveys had extended. This is called the "Shepard Line," and is marked on several of the maps in evidence, and on the 13th of October, 1869, this survey was adopted by the company by the following resolution, to wit:

"Resolved, That the survey and location of the line of the
119 St. Paul & Pacific Railroad, from Crow Wing to the northern boundary of Becker county, in the state of Minnesota, heretofore made under the direction of D. C. Shepard, chief engineer of said company, and laid down and shown upon a map of such survey and location, be, and the same is hereby, ratified, confirmed and adopted, as the location of the line of said railroad, from Crow Wing to the center of the tier of townships numbered one hundred and forty-two; and the president and chief engineer are hereby directed to file said map with the governor of the state and provide him with a duplicate thereof to be filed with the secretary
120 of the interior."

A map of this survey and location was filed in the office of the governor of the state October 20, 1869, and a certified copy thereof was forwarded by the governor to the secretary of the interior November 1, 1869 (P. Rec., —),

and the secretary of the interior acknowledged its receipt by letter dated December 9, 1869, which is as follows, to wit:

"DEPARTMENT OF THE INTERIOR, 121
"WASHINGTON, D. C., Dec. 9, 1869.

"*Sir:* I have received your letter of the 1st ultimo, and on the 13th of that month a map purporting to show the branch line or route of the St. Paul & Pacific Railroad from Crow Wing to the center of the tier of township numbered one hundred and forty-two.

"The route of this road, as prescribed by the act of congress, is from St. Anthony 'via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the legislature of said territory may determine,' which latter point was fixed by the legislature at St. 122 Vincent.

"The route delineated on the map, commencing at Crow Wing, runs nearly due west for over sixty miles, and then runs in a nearly direct course to St. Vincent.

"Before accepting this map, it is necessary that satisfactory evidence should be filed to show that a direct route between Crow Wing and St. Vincent is impracticable, and that the route, so far as selected, is the most direct and practicable one on which a railroad can be constructed between those points.

"The proof required is an affidavit of the engineer who made the exploration and directed the survey, with a sworn 123 copy of exploration, with such other evidence as to the topographical nature of the country as may be accessible and applicable to the subject. I am, etc., etc.,

"J. D. Cox, Secretary."

It appears from the testimony that the engineering difficulties in the way of a line through the point of intersection of the tenth standard parallel with the fourth guide meridian rendered it "physically and financially impracticable." Evidence of Rice, P. Rec., 385. The secretary 124 of the interior adhered to his objections to the line of route known as the "Shepard survey," and time was given to furnish proofs showing the reason for deviating so far to the westward. Proofs were furnished which were deemed in-

adequate (P. Rec., 289–291, 529, 530, 531), and time was extended June 9, 1870, for ninety days, to furnish the req-
125 uisite proofs, and was ultimately extended until November 20, 1870. P. Rec., 531–534. The map, however, was filed in the office of the commissioner of the general land office, as appears from Complainant's Exhibit, 7. P. Rec., 228.

At about the time this survey and location were filed, the Northern Pacific Company, the complainant, commenced negotiations for the purchase of the capital stock of the St. Paul & Pacific Railroad Company, and early in the year
126 1870 the entire capital stock of that company passed to and thereafter remained in the Northern Pacific Company. O. Rec., 821, 826, 827.

The details of this transaction are found in O. Rec., 989–998, 1079–1088. The stock was about $5,000,000, placed in the name of Edmund Rice, three-fifths of which were negotiated to the Northwestern Railway Company in 1867 and 1868, and that company transferred it to Jay Cooke in trust for the Northern Pacific R. R. Co., prior to July 22,
127 1870. The previous transfer to the Northwestern Railway Company was December 23, 1869. The remaining two-fifths were transferred to the Northern Pacific Company by Rice in October, 1870. In June, 1870, it was proposed between Rice, president of the St. Paul & Pacific Company, and the officers of the Northern Pacific Company, to abandon the line of the St. Paul & Pacific road from Crow Wing, or between there and the Falls of St. Anthony, to Lake Superior, for the reason that the Northern Pacific
128 Company were building a road from Lake Superior west, which would touch the Mississippi river about the neighborhood of Crow Wing, and they wished to abandon the road from Crow Wing to a point near Otter Tail Lake, to which point it would run almost

on the same line as the Northern Pacific Railroad, west, and would cross their line at some point between Crow Wing and Otter Tail Lake on its way to the British 129
Possessions; because it would be building two roads on the same line, which would be unnecessary for the business of the country, and there would be a complication of the land grant. And there was another reason—that the system would be more perfect if the line went from St. Cloud to St. Vincent than by Crow Wing. O. Rec., 983–985.

After the Northern Pacific Company had acquired such stock the affairs of the St. Paul & Pacific Company were managed by officers of the former company, acting as offi- 130
cers of the latter company. They substantially controlled the action, business and affairs of the latter in every respect thereafter. O. Rec., 995.

In December, 1870, an arrangement was made by which the First Division of the St. Paul & Pacific Railroad Company were to build the proposed road from St. Cloud to St. Vincent. Prior to that time E. Darwin Litchfield owned the stock of that company, and it was then sold to the Northern Pacific Company. President Becker's testimony; O. 131
Rec., 999–1001, 1123–1127.

At a meeting of the directors of the First Division company, held November 29, 1870, Benson, Gorton and Trott, three of its directors, resigned, and their places were filled by the election of three of the directors of the Northern Pacific Company, J. Gregory Smith, William G. Moorhead and Richard D. Rice. Smith was then president and Rice vice-president, of the latter company. See Exhibits X and Y. P. Rec., 546–548. 132

The scheme by which the First Division Company was to build the road from St. Cloud to St. Vincent for the St. Paul & Pacific Company, assumed definite form about the 1st of April, 1871, and is contained in the exhibits 45 and

46, mentioned in admission (P. Rec., 380, 381, 399–406), and will be hereafter referred to more particularly.

133 In the manner above stated the Northern Pacific Company acquired the management and control of the affairs and business of the First Division Company, and of the St. Paul & Pacific Company. Exhibit 55, pages 75–77; O. Rec., 846 to 848, 982, 983, 894, 895.

The Northern Pacific Company was induced to acquire control of the said two companies, because a scheme had been started to procure a grant of lands to aid the First Division of the St. Paul & Pacific Company in the construc-
134 tion of a railroad from the western boundary of Minnesota, at the junction of the Sioux Wood river with the Red River of the North, to the Winnipeg district of British America. P. Rec., 503–511. This would have been an extension of the road of the First Division Company from Breckinridge north to the international boundary. This bill passed the senate May 16, 1870, and was sent to the house for concurrence on the following day. It became a matter of great importance to the Northern Pacific Company to de-
135 feat the location and building of the road of the St. Paul & Pacific Company from Crow Wing westward to Otter Tail Lake, a distance of about sixty miles, because its route would be substantially upon the line which the Northern Pacific Company intended to adopt, and so would cause a very large deduction from the grant of the latter company, under the proviso in section 3 of its grant, that, if its route "shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore
136 granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act." Sec. 3, act of July 2, 1864. And it became, also, a matter of great importance for the Northern Pacific Company

to control the affairs, policy and acts of the First Division Company. Hence the arrangements which were made by which it acquired control of both these companies. 137

Up to the time of the passage of the act of May 31, 1870, giving the Northern Pacific Company the right to mortgage its land grant, and giving it a second indemnity belt, *it had done absolutely nothing towards locating the line of its road, either the general route or its definite location.* It fixed the line of its general route through Minnesota July 26, 1870, and filed it August 15, and in October of the same year made and filed *an amended line of general route* varying in a very important manner from the one it first adopted. 138 P. Rec., 251. The difference is shown by schedules annexed to the answer of the Northern Pacific Company to the supplemental bill. P. Rec., 396, 398.

The bill for the new grant to the First Division Company, which had passed the senate and gone to the house for concurrence as aforesaid, at the third session of the forty-first congress, on the 2d day of March, 1871, was converted, by amendment, into "An act authorizing the St. Paul & Pacific Railroad Company *to change its line in consideration* 139 *of a relinqueshment of lands:*" and on the following day, March 3, 1871, it passed the senate and was signed by the president. 16 U. S. Stat., 588. It is as follows:

"An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of land. Be it enacted, etc., That the St. Paul & Pacific Railroad Company may so alter its *branch* lines that, instead of constructing a road *from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof, a line from Crow Wing to* 140 *Brainerd, to intersect with the Northern Pacific Railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent*, with the *same proportional grant of lands, to be taken in the same*

that this change shall in no manner enlarge said grant, and

manner along said altered lines as is provided for the present lines by existing laws; provided, however, that this act
141 shall only take effect upon condition of being in accord with the legislation of the state of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines *from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior*, and that, upon the execution of said releases, such lands so released shall be considered as immediately restored to market without further legislation."

In the mean time the legislature of Minnesota had passed an act approved March 2, 1867, by which the following provision was made in regard to building the branch lines
142 of the St. Paul & Pacific Company, to wit:

"Sec. 2. The time limited for the grading and completing the respective portions of the road of said company is hereby extended for the period of two years; but this extension shall not extend or apply to that portion of said road extending from Stillwater to St. Paul, nor to the portion of said road extending from St. Anthony *via* Minneapolis, to a point between the foot of Big Stone Lake and the Sioux Wood river; provided, that if twenty miles of said road, extending from Lake Superior to a point at or above St. Cloud, shall not have been put in operation, with the cars
143 running thereon, by the 2d day of March, 1870, the lands appertaining thereto shall revert and be passed over to the Minneapolis & St. Cloud Railroad Company; and provided further, that this railroad company shall not have the power to consolidate with any other railroad company within this state."

By an act approved March 7, 1870 (Laws of Minnesota, 1870, P. Rec. 356), it was further enacted by said legislature as follows:

"That, whereas, by a proviso contained in section two
144 of chapter one of the special laws of 1867, of an act entitled 'An act to amend the charter of the St. Paul & Pacific Railroad Company,' approved March 2, 1867, it was declared that if twenty miles of the road of said company, extending from Lake Superior to a point at or above St. Cloud, shall not have been put in operation, with the cars

running thereon, by the 2d day of March, 1870, the lands appertaining thereto should revert and be passed over to the Minneapolis & St. Cloud Railroad Company; and, whereas, the company first above named has failed to put into operation, with the cars running thereon, twenty miles of said road therein provided for and required to be built, and has in no manner complied with the provisions of said act, or of the said proviso therein contained; therefore, be it enacted by the legislature of the state of Minnesota, that the lands appertaining to the said road extending from Lake Superior to a point at or above St. Cloud, by reason of any grant made by the congress of the United States, or of any law of this state, or both, are hereby declared to be forfeited and lost to the said St. Paul & Pacific Railroad Company, and the said lands are hereby granted to the said Minneapolis & St. Cloud Railroad Company, to aid in the construction of their branch road, under the provisions of the charter of said last named company."

The history of events by which the proposed grant in favor of the First Division Company was, March 3, 1871, turned into an act authorizing the St. Paul & Pacific Company to change its lines in consideration of a relinquishment of lands before quoted, as well as the history of the location of the changed route under such act and subsequent proceedings thereunder, are very fully detailed in the testimony of Edmund Rice, the president of the St. Paul & Pacific Company, and of George L. Becker, president of the First Division of the St. Paul & Pacific Company. P. Rec., 464–1016, 1020. Mr. Rice says: "I went to Washington and urged the passage of the act of March 3, 1871, as president of the St. Paul & Pacific Railroad Company. I spent considerable time there in the interest of its passage, and drew the bill that was introduced in the house. I went at the instance of the president and members of the executive committee of the Northern Pacific Railroad Company. J. Gregory Smith, of Vermont, was its president; Ex-Judge Rice, of Maine, was its vice-president; Gen. Geo. W. Cass was on the ex-

ecutive committee. Sometimes consulted with Mr. Windom, who was on the board, and with Mr. Billings and others,
149 and the conversation was generally in the office of the Northern Pacific Railroad Company in New York city. The conversation was about the time they were having directors' meetings there in those offices. The first conversation was with Judge Rice and Governor Smith, about June, 1870. The subject came up about the relative positions of the lines under the former acts of congress — the Northern Pacific and the St. Paul & Pacific,— and it was designed to change the line of the St. Paul & Pacific, as it was ex-
150 pressed to me by Gov. Smith and Judge Rice. It was proposed to start a line from St. Cloud to go direct on some practicable route to St. Vincent; added to that, it would go through a greater extent of country. The next conversation was in the spring of 1871 in reference to my going to Washington to secure the desired change. The Northern Pacific Railroad Company were to pay my expenses. Had a great many conversations with different directors about that time. M. H. Dunnell was there assist-
151 ing me at the instance of Mr. Becker, president of the First Division Company. The Northern Pacific Company paid my expenses." The record of the allowance of the following bill by the St. Paul & Pacific Railroad Company at a meeting of the directors, March 22, 1871, was produced. President E. Rice, J. Gregory Smith, R. D. Rice and W. G. Moorhead, to wit:

"*The St. Paul & Pacific Railroad Company,*

"*To Edmund Rice, Dr.*

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"For traveling expenses for four months between St. Paul, New York and Washington; hotel bills and expenditures relating to business in the department of the interior concerning location of lines, including printing, maps, etc.,

and relating to the passage of the act of congress authorizing a change of lines in consideration of a relinquishment of lands, approved March 3, 1871, $21,950.00."

"The president of the Northern Pacific Company informed me that the Northern Pacific directors approved this bill, prior to the meeting of the St. Paul & Pacific Railroad Company directors. They had just had a meeting of their board of directors and adjourned, and we had a meeting of our board, and the bill was then approved by it. It was paid by Mr. Barney, treasurer of the Northern Pacific Company. The business in the department of the interior mentioned in the bill was getting maps of location approved. Couldn't specify any lines except those that were specified under the charter. I conducted the whole of that, making maps, surveys, etc. I presume that the line that was located from Crow Wing sometime in 1869, to Otter Tail Lake, was one of the lines." "These expenditures were for surveys made for a line direct from Crow Wing to St. Vincent, to demonstrate that a direct line between those two points was impracticable, and for surveys from Crow Wing by way of Otter Tail and to St. Vincent, and to demonstrate that that line was practicable, and the only practicable line from Crow Wing. The bill pending in the senate for a grant from Breckenridge, north to St. Vincent, would swallow up or rather overlie the grant from Crow Wing to St. Vincent. Our object was to show that our line could not be built to St. Vincent except by way of Otter Tail Lake and the valley of the Red river, and that would necessarily conflict with the route specified in the senate bill from Breckenridge down the Red River valley, which Mr. Becker was promoting as president of the First Division Company."

"I paid these expenditures myself, and the Northern Pacific Company afterwards paid me. The St. Paul & Pacific

Company had the franchises and land grant, but no money. At this time, March 21, 1871, its stock was nearly all owned
157 by the Northern Pacific Company, or held in trust for them." P. Rec., 464–470, 475.

The Northern Pacific Company, through its officers, managed hereafter, and until a short time before the dispute arose, the affairs of both the St. Paul & Pacific Company and the affairs of the St. Paul & Pacific Railroad Company, First Division.

"After the act of March 3, 1871, I superintended the survey of the new line, filed the map of location under that
158 act, and secured its approval, Think it was before the 18th of November. (The map is in evidence, marked Exhibit O, and witness states that it is the one made under his direction, under the act of March 3, 1871.) The officers of the Northern Pacific Company were informed of everything that was done in respect to the location, and of my acts and of the approval at Washington. They directed me to make the location. Col. Owens was chief engineer, and engineer of the Northern Pacific Company at that time." P. Rec.,
159 470–472.

At a meeting of the directors of the St. Paul & Pacific Company, held March 22, 1871, they passed certain resolutions, which were filed with the map of definite location under the act of March 3, 1871, which was received by the secretary of the interior November 18, 1871, from Edward Rice, president. (This map and certificates had been filed in the office of the governor of Minnesota, November 7, 1871.) The affidavit, and certificates annexed to it, of the
160 president and secretary of the company, under its corporate seal, and of the governor of Minnesota, under the great seal of the state, dated November 7, 1871, with indorsements on said map, will be found in Exhibits 51, 52, 53. P. Rec., 412–414.

It was filed November 18, 1871, and is certified by the president and secretary of the company, in pursuance of the resolutions of the board of directors of the company, passed 161
March 22, 1871, which resolutions were as follows (P. Rec., 413):

"*Resolved*, That an act of congress entitled an act authorizing the St. Paul & Pacific Railroad Company to change its lines in consideration of a relinquishment of lands, approved March 3, 1871, be, and the same is hereby, accepted by this company, and that the location of the branch lines of the railroads which this company is by law authorized to construct, be, and the same are, altered in conformity with said act; and the president and secretary of this company 162
are hereby authorized to execute under the corporate seal thereof, and deliver to the proper officers of the United States government, the releases of lands appertaining to the route hereby abandoned, mentioned in the said act of congress as one of the conditions thereof, and generally to do every act and thing necessary or proper to secure to this company the benefit of the act of congress according to the terms thereof.

"*Resolved*, That the following *be adopted as the line upon which to construct the road*, to wit: Commencing at a point at or near Crow Wing, then following the general course of the Mississippi river on the easterly side to a junction with 163
the Northern Pacific Railroad in the town of Brainerd, on the Mississippi river.

"Also, *from a point on the line of the First Division of the St. Paul & Pacific Railroad near St. Cloud or Sauk Rapids, thence by the most direct and feasible route via St. Cloud to a point of junction with the Northern Pacific Railroad at or near Otter Tail or Rush lakes, and thence to St. Vincent on the boundary line of British America.*

"*Resolved*, That this company commence the surveys of said road *as defined in the foregoing resolution*, and locate the same to Brainerd, and to the point of intersection with 164
the Northern Pacific Railroad at or near Otter Tail or Rush lakes, and thence to St. Vincent, at the earliest practicable moment, and to prepare and file in the office of the secretary of the interior the maps and papers necessary to retire the lands granted by congress; and that when said roads shall

be surveyed and located, that said First Division of the St. Paul & Pacific Railroad, in pursuance of their said contract,
165 be requested to proceed to construct said roads at the earliest possible period consistent with the finances of said company."

On the 19th of December, 1871, to meet the views of the secretary of the interior, the following *further and more formal* release was filed with him, to wit: The resolutions last aforesaid, passed March 22, 1871, with the following resolutions:

"*Resolved*, That the survey and location of the railroad of this company from St. Cloud to St. Vincent, and from
166 Crow Wing to Brainerd, made under the supervision of Chas. A. F. Morris, chief engineer, be, and the same is hereby, approved and adopted, and that duplicate maps of such survey and location, heretofore certified by him, and by the president and secretary of this company, dated respectively November 2 and November 27, 1871, be placed in the hands of the governor of the state of Minnesota, and the secretary of the interior, in compliance with the laws applicable thereto, and the said engineer's report of such location, be recorded upon the books of this company.

"*Resolved*, That the president and secretary be author-
167 ized to execute the following release to the United States:

"WHEREAS, By an act of congress approved March 3, A. D. 1871, entitled as follows: 'An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands,' the St. Paul & Pacific Railroad Company was authorized to alter its branch lines, the said act being in the following words:

[Here follows copy of act.]

"And whereas, the said St. Paul & Pacific Railroad Company, on the 22d day of March, A. D. 1871, duly
168 passed the following resolution:

[Here follows the resolutions, set out above.]

"Now, therefore, know all men by these presents, that the St. Paul & Pacific Railroad Company, in consideration of the premises, hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing

to St. Vincent, and from St. Cloud to Lake Superior, not including, however, in this release, any lands granted by said act to said company along said new or altered lines."

These resolutions of December 13, 1871, were a ratification, if any was needed, of all the acts already done by the officers of the company, the president having already filed these maps both with the governor and with the secretary of the interior.

"FORMAL RELEASE.

"Whereas, by an act of congress, approved March 3, A. D. 1871, entitled as follows: 'An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands,' the St. Paul & Pacific Railroad Company was authorized to alter its branch lines, the said act being in the following words:

[Here follows copy of the act.]

"And whereas, the said St. Paul & Pacific Railroad Company, on the 22d day of March, A. D. 1871, duly passed the following resolution:

"'*Resolved*, That an act of congress, entitled 'An act authorizing the St. Paul & Pacific Railroad Company to change its lines in consideration of a relinquishment of lands,' approved March 3, A. D. 1871, be, and the same is hereby, accepted by this company, and that the location of the branch lines of the railroads which this company is by law authorized to construct, be, and the same are, altered in conformity with said act; and the president and secretary of this company are hereby authorized and directed to execute under the corporate seal thereof, and deliver to the proper officers of the United States government, the releases of lands appertaining to the route hereby abandoned, mentioned in the said act of congress as one of the conditions thereof, and generally to do every act and thing necessary or proper to secure to this company the benefit of the said act of congress, according to the terms thereof.'

"Now, therefore, know all men by these presents, that the St. Paul & Pacific Railroad Company, in consideration of the premises, hereby releases and quitclaims to the United States all lands along said abandoned lines from Crow Wing to St. Vincent, and from St. Cloud to Lake

Superior, not including, however, in this release any lands granted by said act to said company along said new or altered lines.

173 "In witness whereof, the said St. Paul & Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary, this thirteenth day of December, A. D. 1871.

[SEAL.] "EDMUND RICE,

"President of the St. Paul & Pacific Railroad Company.

"WALTER HINCHMAN,

"Secretary St. Paul & Pacific R. R. Co.

"Signed and sealed in the presence of

"CHARLES NETTLETON,

174 "WILLIAM H. CLARKSON."

Such release was acknowledged by the president and secretary of the St. Paul & Pacific Railroad Company, before a commissioner of deeds.

On the 20th of December, 1871, the day after the above release was so filed, the secretary of the interior transmitted said map of definite location to the commissioner of the general land office, accompanied with the following letter:

175 "DEPARTMENT OF THE INTERIOR,

"WASHINGTON, D. C., 20th Dec., 1871.

"*Sir:* I transmit herewith, for appropriate action, a map designating the route and location of the St. Paul & Pacific Railroad from a point at or near St. Cloud to St. Vincent, Minnesota, pursuant to the *acts of 3d March, 1857, 3d March, 1865, and 3d March, 1871.*

"The last of these acts authorizes the company to change its line in consideration of a relinquishment of lands. Said relinquishment was filed in this department yesterday, by Hon. B. F. Wade, agent and attorney for the company, and

176 the map should be considered as filed at that date.

"On first examination of said map, I entertained great doubts as to the comformity of the route therein shown with the requirements of said act of 1871, on account of its not intersecting the line of the original grant at or near Otter Tail or Rush Lakes, the nearest point of the route, as

amended, being some miles distant from either of said lakes; but further reflection has convinced me that the new route is *a substantial compliance with the terms of the act.* 177

"Sufficient evidence has been filed in the department to show that the change of line is in accord with the legislation of the state of Minnesota, as required by the said act of 1871.

"I am, sir, very respectfully,
"Your obedient servant,
"C. DELANO, Secretary."

That the line from St. Cloud to St. Vincent so located and approved was strictly in conformity with the wishes of the Northern Pacific Company admits of no doubt. It 178 was really *located by it.* It was the sole stockholder of the First Division Company, and held all of the shares of the St. Paul & Pacific Company, except the trifling number of about three hundred and fifty. Other evidence in the case leaves no doubt on this point. See testimony of Edmund Rice, Charles A. F. Morris and Geo. L. Becker, hereinbefore referred to. St., pp. 37–40.

Mr. Becker testifies (O. Rec., 1002–1007) that he is familiar with the legislation had in congress in the spring of 179 1871; that he had to do with the procuring of the act, and that the Northern Pacific Company were active in promoting that legislation, and that he had a correspondence with the president of that company on the subject; and the telegrams are produced in relation to that legislation, and the meeting of the board of directors held March 21, 1871, the action of which is hereinbefore stated. Note in particular those of February 2, 1871; March 8, 13 and 14, 1871; September 21, 1871, and December 26, 1871. The last 180 telegram is as follows:

"ST. ALBANS, VT., Dec. 26, 1871.

"GEO. L. BECKER: Secretary of the interior accepts St. Paul & Pacific relinquishment of lands, and has transmitted

a map of the amended line from St. Cloud to St. Vincent to the commissioner of the general land office. The map
181 will be considered as filed December 19th,

"J. GREGORY SMITH."

That nothing could be done by the St. Paul & Pacific Company, without the advice and consent of the Northern Pacific Company, also appears from the record of a stockholders' meeting of the former company, held December 13, 1871, at which the following resolution was passed:

"Meeting of the stockholders of the St. Paul & Pacific R. R. Co., at 120 Broadway, New York, December 13, 1871, pursuant to adjournment from November 16 ult.:

182 "The subject of the resolutions in regard to the St. Paul & Pacific Company was discussed, and on account of the relations of this company to the Northern Pacific Railroad Company, it was deemed inexpedient to take action upon them without the advice and concurrence of that company, and on motion the meeting adjourned to January 9, 1872, to meet with the directors of the Northern Pacific Railroad.

"WALTER HINCHMAN, Secretary."

Immediately after the resolutions of March 22, 1871, were passed, in relation to locating the line from St. Cloud to St.
183 Vincent, the complainant, being the substantial owner of both the First Division of the St. Paul & Pacific Company, and the St. Paul & Pacific Company, as hereinbefore shown, proceeded to arrange, through the boards of directors of the respective companies, nearly all of whom were its directors, as hereinbefore shown, for the construction of the road of the St. Paul & Pacific Company upon the changed lines, that is to say, from St. Cloud to St. Vincent, and from Crow Wing to Brainerd. The scheme was this: The First
184 Division Company, whose credit was then good in Holland, where it had borrowed the money for the construction of its own lines of road, was to build these branch roads out of the proceeds of a new issue of its own bonds for $15,000,000, to be secured by mortgage executed by the St. Paul & Pa-

cific Company upon the roads so to be built, and upon the land grant, lands and franchises of that company. Upon the contruction of the roads, the First Division Company 185
was to operate them, and the proceeds, after paying operating expenses and interest on the bonds, were to go to the St. Paul & Pacific Company for the benefit of its one stockholder, the Northern Pacific Company. An agreement for the construction of the roads was then entered into between these two railroad companies. The lease was executed by the St. Paul & Pacific Company to the First Division Company. P. Rec., 394–406, 518, 262–272.

The St. Paul & Pacific Company executed the mortgage 186
securing the $15,000,000 bonds to Thompson, Becker and Moorhead as trustees, which bonds were issued by the First Division Company. P. Rec., 426–445. All of these instruments bear date April 1, 1871. The form of the bonds is set out in the mortgage, and conspicuously indorsed thereon appear the words, "*First mortgage bond upon three hundred and forty-eight miles of railroad, and two million two hundred and seventeen thousand two hundred acres of land.*" P. Rec., 428. The full grant of ten sections per mile 187
makes just that number of acres.

The statutes of Minnesota put in evidence are referred to and stated at O. Rec., 635; P. Rec., 399.

The recitals of the mortgage or trust deed for $15,000,000 on the branch line from St. Cloud to St. Vincent (Exhibit 66, P. Rec., 426), the bonds secured thereby having been negotiated and put in circulation by the Northern Pacific Company, recite the due organization of the St. Paul & Pacific Railroad Company, and that the lands mortgaged 188
thereby were granted under and by the acts of congress of March 3, 1857, and March 3, 1865 (hereinbefore referred to); that the route was changed by act of March 3, 1871, and that the said act of congress last-named "was in con-

formity with the legislation of the state of Minnesota, and particularly with act thereof approved February 6, 1864."

189 The trust deed or mortgage also recites: "That the said company has duly accepted the act of congress, last aforesaid, and duly resolved to alter and relocate its branch lines of railroad as therein provided, and to execute and deliver the releases of the lands along said abandoned route therein mentioned." P. Rec., 426–427. The bonds secured by this instrument were negotiated in Amsterdam, where these matters as to statute law, of Minnesota, were facts. See the bond as recited in the mortgage (O. Rec., 910–913) for recitals showing the grant of land. "The extent and ag-

190 gregate of such lands to which said company will become entitled by the construction of said railroads, *under existing legislation* being estimated at 2,217,200 acres (*i. e.*, for the branch to Brainerd and the one to St. Vincent, in all three hundred and forty-eight miles) more or less." O. Rec., 912. Also that the company was "authorized to construct and operate in the state of Minnesota a railroad from, at or near St. Cloud to St. Vincent, being a distance of two hundred and ninety-three miles," etc. O. Rec., 911.

William G. Moorhead contracted for building the road. See the resolutions of the directors of the Northern Pa-

191 cific Company, February 15, 1871, and May 10 and 12, 1871. P. Rec., 525.

February 15, 1871: "WHEREAS, The Northern Pacific Railroad is the owner of a majority of the stock of the First Division of the St. Paul & Pacific Railroad Company, and practically the owner of the property; and whereas, it becomes necessary in carrying out our arrangements with the agents for the sale of the bonds of the First Division of the St. Paul & Pacific Railroad Company in Europe, that a contract should be made with some individual for the construc-

192 tion of the road of the St. Paul & Pacific Railroad from Sauk Rapids to St. Vincent; therefore,

"*Resolved*, That this board recommends and assents to the First Division of the St. Paul & Pacific Railroad Company contracting with Wm. G. Moorhead for the construction of said road; and that the president be directed to take

a declaration of trust from said Moorhead, and by proper instrument to indemnify said Moorhead from all risk and damage by reason of entering into said contract."

193

May 10, 1871: "WHEREAS, This corporation is practically the owner of the St. Paul & Pacific and the St. Paul & Pacific, First Division, and their properties and estates, through an ownership of the share capital of those companies, and with a view to protect and promote this interest; therefore,

"*Resolved*, That there be appointed a committee of three, who shall take entire charge of the construction of said roads, and bring them into working use at the earliest day practicable, consistent with reasonable economy.

"*Resolved*, That said committee be also empowered to carry forward and perfect the negotiations for the sale and delivery of the bonds of the St. Paul & Pacific Railroad Company, and to apply the proceeds of said sale to the construction of the roads according to existing agreements, and shall report their proceedings monthly to this board.

194

"*Resolved*, That, as William G. Moorhead holds in trust for this company the contract for constructing the St. Paul & Pacific, First Division, he shall be the chairman of said committee, and that he be authorized to employ a competent clerk to the committee."

At a meeting of the board held May 12, 1871, the president announced as such committee the following members of the board: Mr. Moorhead, chairman; the president, vice-president, Mr. Cass and Mr. Felton.

195

Mr. Geo. L. Becker, president of the First Division Company, was connected with the construction of the railroad from St. Cloud to St. Vincent from the time the arrangements were made for its construction in December, 1870, until it went into the hands of a receiver in the summer of 1873. He testified that he had the general charge of construction for W. G. Moorhead as agent, who was the contractor for that part of the line, but in trust, as has been seen, for the Northern Pacific Company. Smith was president and director, Rice was vice-president and director, and Wm. G. Moorhead was director, of the First Division Company,

196

and they were all directors of the Northern Pacific Company. O. Rec., 1000, 1001.

197 He further testifies that one Wilmer was a director of the First Division Company, and represented the firm of Lippman, Rosenthal & Co., of Amsterdam. That he, Becker, executed the $15,000,000 of bonds as president of the First Division Company, countersigned them as trustee, and sent them to Wm. G. Moorhead, also a trustee, who countersigned and sent them to Wilmer, at London. The money was received from the sale of the bonds by orders drawn by Becker on Lippman, Rosenthal & Co. as the
198 moneys were required here; that he first called the attention of Moorhead to the conflict where the grant of the St. Paul & Pacific Company and that of the Northern Pacific Company overlapped, in a letter which he wrote to him December 25, 1871. O. Rec., 1012, 1131–1140. This matter had been the subject of conversation between him and some of the directors of the Northern Pacific Company at the time they were preparing the bonds and mortgage, more particularly with Mr. Cass, Gov. Smith and Mr.
199 Moorhead. The substance of it was, that the Northern Pacific Company would concede to the St. Paul & Pacific Company priority of grant in the overlap. This was done before the $15,000,000 bonds were issued, and while we were getting the papers prepared it became necessary to state about how many acres the mortgage covered. In order to get at that amount we had to ascertain for ourselves the probable amount of the land grant. That question immediately confronted us when we were estimating
200 the amount of the land grant, the number of acres. The amount as finally estimated and stated in the mortgage was upon that basis, that the St. Vincent line was to have a priority of right across the Northern Pacific line. The issue of these bonds commenced in the spring of 1871, and as

early as May we begun to send them abroad. We got out a good many of them that summer. They were issued as fast as we could get them executed by the officers of the 201
company and by the trustees. Mr. Moorhead replied to my letter to him about the land grant, January 28, 1872, and I wrote him again on the subject, March 1, 1873, and also received a letter from Gen. Cass, then president of the Northern Pacific Company, dated March 15, 1873. O. Rec., 1014.

After the map of definite location of the road of the St. Paul & Pacific Company, from St. Paul to St. Vincent, had been approved and submitted to the commissioner of 202
the general land office by letter, maps and diagrams of the ten and twenty mile limits of the St. Paul & Pacific Railroad, St. Vincent extension, under the act of March 3, 1871, were transmitted to the register and receiver of each of the local land offices within which the lands in dispute were then situated, with letters of withdrawal, in substance the same as the one found, P. Rec., 291, which is as follows:

"DEPARTMENT OF THE INTERIOR, 203
"GENERAL LAND OFFICE, February 6th, 1872.
"REGISTER AND RECEIVER,
"Alexandria, Minn:

"*Gentlemen:*—I transmit herewith a map showing the line of definite location of the St. Paul & Pacific Railroad, St. Vincent extension, with the ten and twenty mile limits of the land grant made thereto under the act of March 3, 1871.

"You are hereby directed to withdraw from sale or location, pre-emption or homestead entry, all the *odd* numbered sections falling within those limits, and to increase in price to $2.50 per acre all the *even* numbered sections within the 204
ten-mile limits, and dispose of the same under the pre-emption and homestead laws only, and at that ratability, except in cases of settlement under the pre-emption laws made prior to the date of definite location of the road, November 7th, 1871. In such cases you will permit the parties to

prove up and pay for their claims upon either odd or even numbered sections at the rate of $1.25 per acre.

205 "The even numbered sections outside of the ten mile limits are not affected by the withdrawal.

"The right of the railroad company attaches from the date of definite location of road, November 7th, 1871. You will please acknowledge the receipt of this letter by its date.

"Very respectfully,

"WILLIS DRUMMOND, Com'r.

These maps, diagrams and circular letters were received at the several local offices at different dates from the 12th to the 15th of February, 1872, and the withdrawal was noted accordingly. Afterwards, on June 18, 1872, the sec-
206 retary of the interior directed the commissioner to revoke his order of withdrawal of such lands by a letter of that date (P. Rec., 290), which is as follows:

"DEPARTMENT OF THE INTERIOR,

"WASHINGTON, D. C., 18th June, 1872.

"*Sir*:—On the 20th December last I transmitted to your office for appropriate action a map, designating the route and definite location of the St. Paul & Pacific Railroad from a point at or near St. Cloud, Minnesota, to St. Vincent in
207 said state. I stated in my letter of transmission that sufficient evidence had been filed in the department to show that the change of line indicated by said map was in accord with the legislation of the state of Minnesota, as required by the act of 3d March, 1871 (16 Stat., 588). This evidence was partly in print, and partly by oral assurance of an officer of the railroad company.

"On the 20th of February last a letter was addressed to the department by LaFayette Emmett, president of the Minneapolis & St. Cloud Railroad Company, alleging that said act of 3d March, 1871, was not only not in accord with the legislation of the state of Minnesota, but directly opposed
208 to it.

"On the receipt of Mr. Emmett's letter, its contents were made known, on the 29th February last, to the attorney of the St. Paul & Pacific Company in this city, with a request that he at once inform the officers of said company of these allegations, and that unless a satisfactory explanation of them

were given to the department, the order withdrawing lands for said road would be revoked.

"No explanation of any kind has to this date been made to the company, and any order that may have been issued by your office withdrawing lands in accordance with my letter of 20th December last, is hereby revoked. 209

"I am sir, very respectfully,

"Your obedient servant,

"HON. WILLIS DRUMMOND, Com'r General Land Office." C. DELANO, Sec'y.

The commissioner of the general land office accordingly addressed the following communication to the local land officers, which was received by them about the 15th day of July, 1872 (P. Rec., 292): 210

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE, June 25, 1872.

"REGISTER AND RECEIVER,
"Oak Lake, Minn.:

"*Gentlemen:* Under date of the 18th inst. honorable secretary of the interior revoked my order of the 6th February last, to the register and receiver at Alexandria, Minn., directing the withdrawal of certain lands for the benefit of the St. Paul & Pacific R. R., St. Vincent extension, and instructing you to increase in price to $2.50 per acre, all the even numbered sections within the ten-mile limits of said withdrawal, and to restrict the disposal of such even sections to homestead and pre-emption. 211

"Upon the receipt of these instructions you will hold all the lands affected by said order of withdrawal for the benefit of some other railroad. You will at once publish a notice in two issues of a newspaper of general circulation in your district, to the effect that said order has been revoked.

"The receiver acting as disbursing agent will defray the expenses of such notice, and refer on his vouchers to this letter as his authority for the disbursement. 212

"You will please acknowledge the receipt hereof, and forward to this office a copy of the paper containing the notice referred to.

"Very respectfully,

"WILLIS DRUMMOND, Commissioner."

The Minneapolis & St. Cloud Railroad Company had a charter to build a railroad between *St. Cloud and Lake Su-*
213 *perior*. It never built any road or located any. P. Rec., 391, 392, 385, 386; Testimony of H. T. Wells, pp. 11 and 12, of Edmund Rice. And it was claimed, as it no doubt will be in this case, that the act of congress of March 3, 1871, was not in accord with the legislation of the state, and that it therefore never took effect, because the state had, by the act of March 7, 1870 (St., page 36), passed over so much of this grant as appertained to the Superior branch to the said Minneapolis & St. Cloud Railroad Company.

214 But it will be observed, first, that no rights ever vested in the last named company because it never located any road. The state was a mere naked trustee, and while the grant remained a float the power that gave it could take it away. 112 U. S., 421, 422. The claim of the Minneapolis & St. Cloud Company was defeated by the change of line and definite location under it, and subsequent state legislation.

Second. The act of March 7, 1870, which purported to pass over that portion of the grant unconditionally and abso-
215 lutely to said company, *in advance of any road constructed or completed by it*, was *ultra vires* and void.

Third. That congress afterwards approved of this changed line, and ratified it, and the act of March 3, 1871, if that were needed, by the act of March 3, 1873, by which it was enacted:

"That the time for the completion of the railroad from St. Anthony to Brainerd, in the state of Minnesota, as now limited by law, and of the railroad from St. Cloud to St.
216 Vincent, in said state, *as now located with the approval of the secretary of the interior*, be extended for the period of nine months from the time limited by the acts of congress relating to the same respectively, and if completed within the said nine months the said railroads shall be entitled to all the benefits of the several provisions of the acts of congress

relating thereto, in the same manner as if said roads had been fully completed within the time limited."

This act was passed after the definite location, and after 217
the work of construction on the changed lines as provided for in the act of March 3, 1871, had been suspended, and is an express congressional recognition and ratification of the line as located and constructed.

Fourth. It will be remembered that by section 6 of the act of the legislature of Minnesota, of February 6, 1864 (fol. 32), the St. Paul & Pacific Company was authorized to re-locate its lines of road "from St. Anthony to the Red River of the North, so as to run and construct the same 218
from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, and it shall not be required of said company to construct said road by the way of Crow Wing." And the state has ratified and confirmed the changed lines by repeated enactments, particularly by an act approved March 11, 1873, Special Laws, page 297, by which it was provided:

"Section 1. That the time for the grading and comple- 219
tion by the St. Paul & Pacific Railroad Company of its branch lines of railroad, in accordance with the change of such branch lines authorized in an act of congress of the United States, passed March 3, A. D. 1871, entitled 'An act authorizing the St. Paul & Pacific Railroad Company to change its line, in consideration of a relinquishment of lands,' be, and the same is hereby, extended to and until the first day of January, A. D. 1874; and the said company so completing the said line within the time in this act limited, shall have and be entitled to the grant of lands in said act of congress made and provided, and to all and singular the same rights, privileges, immunities, lands and property as if such 220
lines of railroad had been constructed and put into operation, fully equipped for business, within the time heretofore limited by law for the same: Provided, that the foregoing extension of time is hereby granted to said railroad company and accepted by it upon the condition that it will carry

freight and passengers over its line upon equal and reasonable terms: Provided, that the branch of said railroad running from St. Cloud to St. Vincent shall run to Sauk Center, Osakis, Alexandria, Fergus Falls and Glyndon."

To the same effect are the acts of the legislature of Minnesota of March 5, 1874, March 8, 1875, March 6, 1876, and March 1, 1877 (P. Rec., 399), as legislative ratification and recognition that the act of congress of March 3, 1871, was in accord with the legislation of the state of Minnesota.

But the Northern Pacific Company came promptly to the front to sustain the location, as appears from Exhibit 55 (P. Rec., 420), which is as follows:

"NORTHERN PACIFIC RAILROAD COMPANY,
"*Treasurer's Office, 120 Broadway,*
"NEW YORK, 31st July, 1872.

"HONORABLE COLUMBUS DELANO, Secretary of the Interior,
Washington, D. C.:

"*Sir:* In the matter of your revocation of the order withdrawing from sale certain lands for the use of the St. Vincent line of the St. Paul & Pacific Railroad Company, under act of congress approved March 3, 1871, you kindly assented to my proposition that I should be heard upon the law in favor of the original withdrawal of the land.

"By an understanding with Mr. Smith, the solicitor of the department, the hearing was postponed until I could confer with certain other parties in interest, who were to meet here on the 30th inst. The result of that conference is contained in a resolution passed by the board of directors of the Northern Pacific R. R. Co., of which I inclose a certified copy herewith.

"We desire to be heard at an early day, and so soon as it can be ascertained what day will suit the convenience of the committee, an appointment to meet in Washington will be made, of which Governor Smith will notify you.

"I make this explanation to you that there may be no misapprehension from the delay in presenting the case, a delay which I regret but cannot avoid.

"Yours respectfully, GEO. L. BECKER,
"President of the First Division of the St. Paul & Pacific R. R. Co."

"RESOLUTION.

"WHEREAS, A question has arisen in reference to the withdrawal of the lands of the St. Paul & Pacific Railroad, 225
which caused the secretary of the interior to doubt the legality of his order withholding said lands from market; and whereas, the Minneapolis & St. Cloud Railroad Company asserts a claim to a portion of the lands, which, under the terms of the act of congress, the St. Paul & Pacific Railroad were required to release; and whereas, it is believed by this board that the action of the secretary in ordering said lands withdrawn is in conformity with the act of congress of 1871, and that the release of the St. Paul & Pacific Railroad is a good and sufficient release; and whereas, the subject is one of great importance to all interested, and it is
proper that in the hearing now soon to be had before the 226
department of the interior this company, with a just regard for its interest in the said St. Paul & Pacific Railroad, should be properly represented: Therefore,

"*Resolved*, That the president, vice-president, Messrs. Billings and Windom, be a committee to represent the interests of this company before the department at Washington, and, in conjunction with the counsel of this company, the Hon. B. F. Wade, to co-operate with the Hon. Geo. L. Becker, president of the St. Paul & Pacific Railroad, First Division, in sustaining the order of withdrawal of said lands, heretofore made by said department." 227

"I certify that the foregoing is a true copy of a resolution passed at a meeting of the board of directors of the Northern Pacific Railroad Company, held July 31st, 1872.

(Seal of N. P. R. R. Co.) "SAML. WILKESON,
"Secretary N. P. R. R. Co."

The action taken by the Northern Pacific Company pursuant to the above resolution appears from the testimony of Mr. Becker, who says he was before the secretary of the interior in 1872, upon an application for a revocation of the order revoking the order for the withdrawal of the lands of 228
the St. Vincent extension of the St. Paul & Pacific Company, and that he went there more particularly at the instance of the Northern Pacific Company, to induce the department to change its order. That was in the month

of July, 1872. He had one conversation with their full board at their office at 120 Broadway, New York, and that
229 he read to them the argument that had been prepared for the secretary of the interior (it had been printed), in support of this application: that he did not think there was any official action taken in the matter. The board approved fully of the argument. They seemed very well satisfied with it. The argument was subsequently made to the secretary of the interior, and it resulted in a revocation of the order. That he subsequently received a telegram in relation to his trip to Washington from Mr. Moorhead, as
230 follows:

"NEW YORK, Sept. 4, 1872.

"GEO. L. BECKER: Your trip to Washington great success. Lands restored to market. Everything there looks well. Lippman cables: 'Keep along till Rosenthal returns.' Hope to provide some money to-morrow. Expect fair sailing hereafter.

"W. G. MOORHEAD."

Edmund Rice, president of the St. Paul & Pacific Company, also testifies that he knew of the controversy referred
231 to with Judge Emmett, and that he had a good many conversations with officers of the Northern Pacific Company about it, and that they took the position that he did, that Judge Emmett had no vested rights, and they claimed that this location that he had made was right and proper. That his salary of $5,000 a year as president of the St. Paul & Pacific Company was paid by the Northern Pacific Company. That he did not know of any controversy in regard to these lands between the St. Paul & Pacific Company and the
232 Northern Pacific Company, until about the time he was examined in this case as a witness; that while connected with the St. Paul & Pacific Company as president and director, the subject of this overlap or conflict was spoken of by him with Mr. Windom, Governor Smith and others; that the

substance of the talk was that the bill (act of March 3, 1871) should be so prepared as to give the St. Paul & Pacific Company a full grant,— all the lands they could,— 233
as the Northern Pacific could make up its deficiencies anywhere. Did not hear anything to the contrary in his discussions, and that is the way the matter was understood while the measure was being pressed before congress. P. Rec., 472–475, 483–484.

On the 3d day of September, 1872, the order revoking the order of the secretary of the interior, withdrawing the lands from market, was revoked by order to the commissioner of the general land office, as follows: 234

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., 3d Sept., 1872.

"*Sir:* Referring to the departmental letter to your office of the 18th of June last, in which my order withdrawing lands for the St. Paul & Pacific Railroad was revoked, I have now to direct you to rescind said order of revocation, and restore the withdrawal; with the distinct understanding, however, that this is not to be regarded as a decision on the merits of the case — all questions as to the right of the road to the lands being reserved for future consideration.

"Very respectfully, 235
"Your obedient servant,
"W. H. SMITH, Acting Secretary.

"Hon. WILLIS DRUMMOND,
"Commissioner General Land Office."

The several local land officers were promptly notified of said order, and directed to conform their action thereto.

COMPLAINANT'S TITLE.

We now come to the consideration of the title asserted by 236
the complainant, the Northern Pacific Railroad Company, to the lands in question, being about five hundred thousand acres, situated, as will appear from the maps and diagrams in evidence, within the geographical boundaries of the place

and indemnity limits of the grant for the road from St. Cloud to St. Vincent, and also within the like limits of the grant to
237 the Northern Pacific Railroad Company.

In the original bill the complainant alleges that it fixed the *general* route of its railroad in the years 1869 and 1870, and filed a map or plat of such general route, approved by the secretary of the interior, in the office of the commissioner of the general land office, and that the secretary of the interior ordered the withdrawal of all the odd-numbered sections of land within twenty miles on each side of the line of said general route, for complainant's benefit; that it
238 amended its said line of general route and filed a corrected map thereof, approved, etc., on the 8th of October, 1870, and that on the 12th of the same month the secretary of the interior ordered the withdrawal of lands, as aforesaid, conformably to such corrected line. This was done under section 6 of its charter (act of July 2, 1864), but the act did not require or direct any such withdrawal, but provided only that, after the survey of the lands and fixing of the general route, "the odd sections of land hereby granted shall not
239 be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided by this act."

The bill further charges that the complainant "proceeded with the work of *definite* location and construction of said railroad, and *definitely* fixed the line thereof, *and on the 21st of November, 1871*, filed a map or plat of the line so definitely fixed, in the office of the commissioner of the general land office." That it constructed and equipped said
240 railroad and telegraph line from a point about twenty miles west of Duluth to the Red River of the North, and has ever since operated and maintained the same "on said line of definite location, as the same is indicated and laid down on said map or plat filed November 21, 1871." That the

said railroad was accepted and approved by the president of the United States; that after the filing of the respective maps or plats of the *general* route of said road, the commissioner of the general land office prepared maps showing the several limits of its grant in respect to its line of *general* route, and transmitted the same to the local land offices at St. Cloud and Alexandria, September 15 and November 7, 1870, with instructions to withdraw all the odd-numbered sections within said limits from sale, location, pre-emption or homestead entry, and that all the lands claimed by it in this suit are within the limits of such withdrawals, and were, "at the time the line of its said railroad was definitely fixed, and a plat thereof filed in the office of the commissioner of the general land office, *free from pre-emption or other claims or rights, not reserved, granted, sold or otherwise appropriated, and the United States had full title thereto*, excepting only the reservation, grant and appropriation thereof for it," as hereinbefore stated. P. Rec., 43–47. 241 242

These allegations are put in issue by the answer, except that the construction and equipment of the complainant's road is admitted, and the defendants claim that the title to the lands, both legal and equitable, was in the St. Paul & Pacific Company, subject to the lien of the $15,000,000 mortgage. P. Rec., 69–73; O. Rec., 215–218. 243

The answer to the supplemental bill claims that the map and survey of the road of the St. Paul & Pacific Company were not accepted and adopted or authorized by the latter company until the same were accepted or adopted at a meeting of the board of directors of the said company held December 13, 1871, "*which was long after this defendant* [the N. P. R. R. Co.] *had definitely located its road entirely across the state of Minnesota, and had duly filed a map showing such definite location, with the secretary of the interior.*" O. Rec., 382–383. It is also denied in the answer that the 244

act of congress of March 3, 1871, was in accord with the legislation of the state of Minnesota, for the reason, among
245 others:

"That prior to the passage of the said act, the said grant of lands made as aforesaid to the state of Minnesota, to aid in the construction of the said new branch running from St. Cloud to Lake Superior, had been resumed as aforesaid by the state of Minnesota and transferred to the said Minneapolis & St. Cloud Railroad Company, and was then owned and held by said company, so that the said St. Paul & Pacific Railroad Company, at the time of the passage of the said act, was, and has ever since remained, wholly unable to execute the release required by the said act of congress as
246 a condition of its taking effect; by reason whereof this defendant submits that the said act of March 3, 1871, has never taken effect, but has remained wholly inoperative, unless the act of congress, approved March 11, A. D. 1873, hereinafter mentioned, operated to give effect thereto from and after that date, . . . and that the adoption of the said surveyed route, and of the said map made as aforesaid, on December 13, 1871, could not lawfully have, and did not have, any retroactive effect whatever, as against this defendant, so as to make said unauthorized survey a lawful and authorized definite location of the line of the said St. Paul & Pacific
247 Railroad Company at a date prior to that last above mentioned; that after the passage by the said St. Paul & Pacific Railroad Company of the said resolutions of March 22, 1871, surveys of lines were made by engineers in the employ of the said St. Paul & Pacific Railroad Company, but this defendant avers that in so far as concerns the route of that portion of the said branch line lying opposite the lands in controversy in this suit, the surveys so made were in violation and in disobedience of the resolution of March 23, 1871, and were an unauthorized departure from the route prescribed by such resolution, and that the same so remained until after the line of the defendants' railroad had been defi-
248 nitely *located entirely across the state of Minnesota, and a map thereof had been duly filed in the office of the secretary of the interior.*"

It is further claimed that the releases executed by the St. Paul & Pacific Company to the United States were wholly

inoperative, for the reasons before stated, and that, at the time of the filing of the plat of the surveys in the general land office, December 19, 1871, the route of such surveys 249
remained wholly unauthorized by the act of congress of March 3, 1871; and that the same continued so to remain until the passage by congress of the subsequent act, approved March 3, 1873, entitled "An act for the extension of the time to the St. Paul & Pacific Railroad Company for the completion of its road." O. Rec., 383–384.

The answer also insists upon the matters mentioned in the original bill, establishing and filing maps of the general route of its road, and withdrawal of lands thereunder, and 250
alleges:

"That, while the said withdrawals remained in full force, and prior to August 1, 1871, the said Northern Pacific Railroad Company *definitely* located upon the surface of the earth, by actual surveys and measurements, all that part of the line of its said railroad extending from Thomson Junction, in the county of Carlton, in the state of Minnesota, across the said state *to the western boundary thereof;* and shortly afterwards, and prior to November 18th of the same year, caused to be made and duly authenticated a map 251
showing such definite location; and afterwards, and on the day last aforesaid, duly delivered said map to the secretary of the interior, with the intent that the same should be filed and remain on file, from and after that date, in the office of the commissioner of the general land office.

"That, after the line of the said railroad had been definitely located as aforesaid *within the state of Minnesota*, and prior to November 18, 1871, the said Northern Pacific Railroad Company duly constructed and completed, in all respects as required by the said several acts and joint resolutions of congress relating thereto, all that part of the said Northern Pacific Railroad so as aforesaid definitely 252
located; and the same had been actually completed and put into operation prior to the delivery of the said map of definite location to the secretary of the interior as aforesaid.

"That at the time of the making of the said withdrawal of lands of August 13, 1870, the United States had full

title, *not reserved, sold, granted or otherwise appropriated*, and free from pre-emption or other claims or rights, in and
253 to all the several parcels of land described in Exhibits 'A' and 'B' of the said supplemental bill; and that all of the said lands lie within a distance of twenty miles of the Northern Pacific Railroad, as the same has been definitely located and constructed, and also, with the exception of the tracts particularly described in Exhibit 'A' of this answer, all of the same lie within the limits of the said original withdrawal.

"That at the time of the definite location by the said Northern Pacific Railroad Company of its line of railroad *through the state of Minnesota*, as hereinbefore set forth, and the filing of the map of such definite location in the office of the commissioner of the general land office, the United
254 States had full title, *not reserved, sold, granted or otherwise appropriated*, and free from pre-emption or other claims or rights, in and to all the tracts of lands described in Exhibits 'A' and 'B' of the said supplemental bill." O. Rec., 393–395.

Said supplemental answer admits that the bonds for $15,000,000, when issued, had printed upon their face the words "First mortgage bond upon three hundred and forty-eight miles of railroad, and 2,217,200 acres of land," and insists that the statement cannot be regarded as the state-
255 ment of the Northern Pacific Company, but only as the statement of the opinion of its authors that the lands which would enure to the St. Paul & Pacific Railroad Company would amount to that quantity, and denies that the Northern Pacific Company ever authorized such statement, and alleges that if the bonds had been accompanied by a specific declaration by the latter company, over its seal, that such lands would enure to the St. Paul & Pacific Company under the said acts of congress, such statement would have
256 amounted to no more than the expression of a mistaken opinion upon a question of law, and would not have been binding upon any one. O. Rec., 384, 385.

The proofs show that the maps of location of the *general* route of the road of the Northern Pacific Company (Ex-

hibits 2 and 4, P. Rec., 280) extended only from Lake Superior to the Red River of the North, and that the alleged definite location of the same (Exhibit 3, *id.*) shows 257
only the location of the constructed line from Thomson, in Carlton county, Minn., to the Red River of the North. The alleged withdrawal of lands, made August 13, 1870, as modified October 12, 1870, on filing original and amended maps of general route, is found in Exhibits "A" and "B," P. Rec., 281. See, also, in connection with such general location, Exhibit "C," P. Rec., 281–282.

By letters dated December 26, 1871, the commissioner of the general land office directed the local land officers at 258
St. Cloud and Alexandria to withdraw the lands within the twenty-mile limits along the general line or route, which embraced the lands in controversy. P. Rec., 333–340. The withdrawal purports to be from "sale, location, preemption or homestead entry."

The Northern Pacific Company commenced the work of definite location of its road between Lake Superior and the Red River, in the month of April, 1870, and completed its survey on the ground by the last of July, 1871. The con- 259
struction of the road from Thomson to the Red River was finished the last week in December, 1871. Testimony of Rosser, P. Rec., 254, 255. The complainant's alleged definite location was filed in the office of the commissioner of the general land office *November 21, 1871.* O. Rec., 551; Exhibit 3, P. Rec., 280. The definite location of the St. Paul & Pacific Company was filed with the secretary of the interior three days earlier. O. Rec., 832, 833, 993, 994, 1087, 1088; Ex. 51, O. Rec., 88. 260

On the 6th of January, 1873, the secretary of the interior transmitted the report of commissioners appointed by him to examine the complainant's road, by which they reported that it had been completed from Thomson, at its junction

with the Lake Superior Railroad, in Minnesota, to the Red River of the North, a distance of two hundred and twenty-
261 eight miles, and recommended the acceptance of the same and the issue of patents of lands due on the completion thereof. These recommendations were approved by the president on the same day. On the following day the secretary of the interior transmitted a copy of said report and recommendations, together with the map of said completed road, to the commissioner of the general land office. Exhibits "E" and "F," P. Rec., 284

After the secretary of the interior had revoked his order
262 vacating the withdrawal of lands for the St. Vincent extension under the grant, as hereinbefore stated, upon the earnest representation and contention on the part of the Northern Pacific Company in favor of the propriety and validity of the location of the line of the branch road of the St. Paul & Pacific Company under the act of March 3, 1871, the building of the road under the contract, with Moorhead as agent and trustee for the Northern Pacific Company, proceeded, as well as the negotiation and sale of the $15,000,000 bonds
263 for that purpose, until work was suspended in the fall of 1872, caused by the want of money to pay for it. Mr. Becker says (P. Rec., 295, 484, 485): The want of money was caused by a failure to place the bonds — to get money on them. "The bonds had all been sent to Amsterdam and a large part of them negotiated. The interest on the bonds of the First Division Company was falling due in the fall of 1872, I think it was. The question was, what provision should be made for paying these coupons. Lippman,
264 Rosenthal & Co. appeared to be anxious to have the Northern Pacific Railroad Company make the necessary provision for paying these coupons. The Northern Pacific Railroad Company didn't consider itself in a condition to do so. They wanted Lippman, Rosenthal & Co. to do that. There was

considerable corresponding backwards and forwards by cable on this subject, which resulted in a proposition from Lippman, Rosenthal & Co. that they would furnish part of 265
it if the Northern Pacific Company and Jay Cooke & Co. would furnish the other part, which they declined to do. The result was that default was made in the interest of the bonds of the First Division Company. When that default came the sale of the bonds on the fifteen million issue stopped. Application was made to put the road in the hands of a receiver."

It appears that $10,500,000 of these bonds were sold in Holland, and that of the proceeds but $3,300,000 ever got 266
into the roads, while $2,500,000 were used by the First Division Company in the payment of interest on its own lines of road, and in the completion of its own main line from St. Paul to Breckenridge. This diversion of funds was made in form by the First Division Company, but in fact by the Northern Pacific Company, its sole stockholder, which, during all this time, dominated its franchises and controlled its policy, management and property. The work of construction on the St. Vincent extension ceased for 267
the want of these diverted funds in the fall of 1872, leaving only fragmentary lines of road completed. The First Division Company, and the St. Paul & Pacific Company, being insolvent, this court, through its receiver, in the suit of John S. Kennedy and others, against these companies and others, took possession of the road and all the property of the St. Paul & Pacific Company, and of the land grant, to save something out of the wreck for the bondholders. J. P. Farley was appointed receiver with authority to com- 268
plete the road: issued debentures to borrow money, etc., for that purpose. See orders of the court, DILLON, J.; P. Rec., 406–411, 574–580.

Notwithstanding all the complainant had done to make,

and secure the approval, of the new location of the St. Vincent extension under the act of 1871, so that it could avail
269 itself of the lands between Crow Wing and Otter Tail lake, incumbered by the line of 1869, known as the "Shepard survey," and all it had done in connection with the sale of the bonds, with the accompanying representations, under the fifteen million mortgage, we find it, for the first time, in the spring of 1873, making claim to the lands within the conflicting limits of the grants to the two companies. Immediately after the failure of the First Division Company and the St. Paul & Pacific Company, *it wholly changed front, with*
270 *the purpose of defeating the operation of the fifteen million mortgage on the lands in controversy and to secure to themselves that which they had caused to be pledged to the bondholders.* And it is now admitted that *it has received patents for, or is claiming under its congressional land grant, all the lands in odd numbered sections within twenty miles of its railroad as located and constructed in Minnesota*, to the purpose of defeating the operation of the fifteen million mortgage on the lands in controversy and to secure to them-
271 selves that which they had caused to be pledged to the bondholders. And it is now admitted that it has received patents for, or is claiming under its congressional land grant, all the lands in odd numbered sections within twenty miles of its railroad as located and constructed in Minnesota, to the same extent as if no grant had ever been made to the state of Minnesota to aid in the construction of any of the other lines of railroad mentioned in the pleadings. P. Rec., 585. And it has been so taking and claiming, and now
272 claims, the benefit of its grant within the territory disincumbered by the act of March 3, 1871, and the location and releases under it. This act, and what was done under it, was intended and operates as an exchange of lands. *The complainant now claims the benefit of the lands given, as well as*

those received by the exchange. The defendant, the St. Paul, Minneapolis & Manitoba Railway Company, claims title to these lands through a foreclosure and sale of the fifteen 273
million mortgage, and so *is vested with all the equities of the bondholders, as to whom the changed policy and claims of the Northern Pacific Company, as now insisted on, are grossly fraudulent and inequitable.* It should be held estopped, and bound by the rule of common honesty.

Mr. Becker says that he did not become aware of the fact that the Northern Pacific Company claimed that their grant had priority to the St. Paul & Pacific grant until after the letter of Cass to him of March 15, 1873, and it is his 274
impression that it was some time in April or May, 1873, that he was first notified that the Northern Pacific Company had opposed the claim of the St. Paul & Pacific Company to priority. This was the next spring after the suspension of the work on the St. Vincent extension. O. Rec., 1014.

To bring this matter before the land department at Washington, the St. Paul & Pacific Company selected certain lands within the conflicting limits, amounting to one thousand 275
nine hundred and twenty acres, and asked to have them certified to the state in aid of its road. The complainant resisted the application successfully before the commissioner, and an appeal was taken to the secretary of the interior, the trustees under the $15,000,000 mortgage coming into the controversy, and were heard. The secretary of the interior reversed the decision of the commissioner May 15, 1873. His decision is referred to in the pleadings in this cause, and is as follows: 276

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., May 13, 1873.

"*Sir:* I have considered the case of the St. Paul & Pacific Railroad Company vs. The Northern Pacific Railroad Company, on appeal from your decision, adverse to the

former company. The lands in controversy are within the ten-mile limits of the St. Paul & Pacific, and the twenty and
277 thirty mile limits of the Northern Pacific, at the point where said roads intersect each other near Glyndon, in Minnesota. The St. Paul & Pacific claim under the acts of March 3, 1857, March 3, 1865, and March 3, 1871; the Northern Pacific under the act of July 2, 1864. The line of the St. Paul & Pacific was definitely located along the lands in controversy in August and September, 1871, and prior to the definite location of the Northern Pacific, although said road did, on the 13th of August, 1870, file with the commissioner of the general land office a map of the general route of its road, under the sixth section of its charter.

"The Northern Pacific Company claim the land by virtue
278 of the provisions of the said sixth section, and the withdrawal made by the secretary of the interior upon the filing of the map of general route.

"The sixth section provides 'That the president of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided in this act.'

"The third section shows what lands were granted. The
279 fixing of the general route of the roads exempts the odd sections for forty miles in width on each side of the road from sale, entry or pre-emption; but it does not exempt them from appropriation in other ways. *It does not exempt them from appropriation by congress for other purposes. The language used is to be construed strictly against the grantee.* It is not general enough to prohibit an appropriation of the land for the satisfaction of a prior railroad grant. Nor do I think that the withdrawal made on the filing of the map of the general route is sufficient to take the lands from the St. Paul & Pacific Company. The act of 1857 provides that
280 'in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said territory or future state to select,

subject to the approval of the secretary of the interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections, as 281
shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the territory or future state of Minnesota for the use and purpose aforesaid.'

"'And provided further, that any and all lands heretofore reserved to the United States by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any 282
other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act,' etc.

"It will be observed that indemnity is given only for lands sold, and to which pre-emption rights have attached, and not for lands reserved at the time the line is definitely fixed. These lands were reserved, and therefore do not come within the terms of the act. If it be claimed that the act of 1871 is the source of title for the lands along the altered line, and that these lands were reserved or withdrawn before the passage of that act, it may be replied that the act
of 1871 is an amendment of the act of 1857, and purports 283
to alter the line of the road merely, and should be construed as though it were inserted in that act, and when thus read it does not operate to withdraw the lands in controversy, because they were not reserved *before* the passage of the act, and are not within its limits.

"There is another question which forces itself upon my consideration in this case, not because it has been made or urged by either of the parties, but because a third party has called it to my attention. He alleges that the St. Paul & Pacific Railroad can take nothing by the act of 1871 because it was not 'in accordance with the legislation of the 284
state of Minnesota.' The act provides that it 'shall only take effect upon condition of being in accordance with the legislation of the state of Minnesota.' It is charged that it is not in accord with the legislation of that state because she had, on the 7th of March, 1870, passed an act by which she

granted the lands claimed by the Lake Superior branch of the St. Paul & Pacific to the Minneapolis & St. Cloud Rail-
285 road. I think the object of inserting this clause was to respect rights that had been acquired under state legislation. If the Minneapolis & St. Cloud road had any vested rights, congress did not propose to interfere with them by allowing a change to be made in the line of the St. Paul & Pacific. But she had no such vested rights. She has never definitely located the line of her road, and all the claim that she could have was a float, liable to be defeated by the proper authority at any time before definite location. It was defeated by the change of line and definite location under it. Congress, March 3, 1873, virtually approved of this changed line, and the state of Minnesota, by the act of March 11, 1873, ex-
286 pressly granted the lands to the St. Paul & Pacific Company. That company have mortgaged them to secure their bonds, and a very large amount of the bonds have been sold, and are now in the hands of innocent purchasers. Under these circumstances I must overrule the objection, and leave the parties to their remedy in the courts, if they desire to pursue the subject further.

"I am asked by the Northern Pacific to allow that company to select other lands as indemnity, in the event that I should award the lands in controversy to the St. Paul & Pacific. I decline to dispose of that question now, and
287 prefer to leave it open until it shall necessarily arise, upon a selection being made of other lands for the lands now in controversy, which are hereby awarded to the St. Paul & Pacific, upon her showing that she has fully complied with the law in the construction of her road.

"Very respectfully,
"C. DELANO, Secretary.

"Hon. WILLIS DRUMMOND,
"Commissioner G. L. Office."

Under this decision of the secretary the lands in question in the original bill, were certified and conveyed by a patent,
288 to the state for the use of the defendant company. Afterwards, on the 22d of February, 1877, they were conveyed by the state to the St. Paul & Pacific Company, due and proper proof of the completion of the road of that company along and opposite to such lands having first been furnished.

P. Rec., 424–425, 536–544, Exhibit 65. See letter of the secretary of the interior to the governor of Minnesota, December 4, 1873, acknowledging the receipt of three 289
maps of certain portions of the road as completed. Exhibits 59, 60, 61, 62, 63, 64, 65. These exhibits show a compliance with the terms of the grant, and that the St. Paul & Pacific Company was entitled to a conveyance of lands on account thereof.

These lands were certified and patented to the state before the commencement of the original suit, but were not conveyed to the St. Paul & Pacific Company until about one year thereafter. 290

After the bill of complaint was filed in this cause, the trustees in the fifteen million dollar mortgage, Horace Thompson, Wm. G. Moorhead and Geo. L. Becker, were removed from their trust, and Jacob S. Wetmore, Thomas Denny and Thomas W. Pearsall were chosen as trustees in their stead, and on or about the 20th of December, 1875, as such trustees, they commenced a suit in this court, on the equity side thereof, for the foreclosure of the trust deed or mortgage, and for other purposes, in which a decree of sale 291
was rendered April 11, 1879 (P. Rec., 554), under which the lands, land grant, road and other property described were sold to the complainant in the supplemental bill, the St. Paul, Minneapolis & Manitoba Railway Company, June 14, 1879 (P. Rec., 562), and a conveyance thereof was executed to it, as such purchaser, June 21, 1879, which sale and conveyance were confirmed by the court on the same day. P. Rec., 567, 570.

After the conveyance of the lands in question, with others, 292
to the St. Paul & Pacific Company, dated February 22, 1877, and on June 26, 1878, a written stipulation was made between the complainant in the original suit and the defendants therein who had answered, to wit, the substituted

trustees under the fifteen million mortgage and J. P. Farley, receiver, *but to which the St. Paul & Pacific Company was*
293 *not a party*, stating that said conveyance had been made to said company "since the commencement of the suit, and that the suit should proceed to a hearing and decree in the same manner and with like effect as if said alienation had been made before the commencement of the suit and stated in the bill, or as if the same had been stated in a supplemental bill, and admitted by answer; that said suit should proceed accordingly, and said suit was thereby dismissed as to the Hon. Geo. P. Wilson, attorney-general of Minnesota;" but
294 the state did not, nor did the attorney-general, at any time appear or take any part in the suit, although the bill of complaint had been taken as confessed by and against said attorney-general, as well as the St. Paul & Pacific Company, December 24, 1875.

It is alleged in the bill that the attorney-general is made a party thereto as the legal representative of the state, that thereby the state of Minnesota and the governor thereof might have notice of the pendency of the suit and be bound
295 by the decree therein.

Recurring briefly to the construction done upon the St. Vincent line, the evidence discloses as follows: The arrangement for construction, namely, the agreement, lease and mortgage already referred to. The work of construction commenced about December 1, 1871, and was let to De Graff & Co., subcontractors under Moorhead, and was to have been fully completed prior to March 3, 1873. Mr. Moorhead, one of the complainant's directors, had charge of the
296 enterprise for the railroad companies. The witness Crooks, of the firm of De Graff & Co., says that the work was suspended "because we declined to work without pay; Moorhead failed to provide the means to meet the estimates according to his engagements. If Mr. Moorhead had com-

plied strictly with his part of these contracts, the work of completing the lines of road covered by them, so far as De Graff & Co. were concerned, the entire extension lines, 297
would have been completed before the day fixed in these contracts." P. Rec., 261, 262.

At the time the work of construction ceased, in the fall of 1872, thirty-five miles of road, extending from St. Cloud to Melrose, was ironed, and in all respects fully completed and ready for operation. Another portion of road, one hundred and four miles long, commencing at a point twelve miles south of Glyndon — the point where the two roads cross — and extending to a point ninety-two miles north of 298
Glyndon, was ironed. This one hundred and four miles required a little surface ballasting, afterwards done by the receiver, to be ready for the running of cars. Although not fully supplied with water tanks and some other appurtenances, it had been operated by the receiver ever since he took possession, in the fall of 1873. P. Rec., 259–260, 267–269,

Of the remaining two hundred and nine miles of road when the work of construction ceased as aforesaid, the 299
grading was completed between Melrose and the point twelve miles south of Glyndon, except six hundred thousand cubic yards, and between the point ninety-two miles north of Glyndon and St. Vincent, except eighty thousand cubic yards; and the ties, bridges and piles were all out at points within reach of construction trains. P. Rec., 261, 262.

In the construction of the St. Vincent branch, at various points along the line, some slight departures were made from the line of definite location. The relation of the line 300
of construction to that of location, at all points where the lines are not the same, will appear on the map marked "Exhibit 50." P. Rec., 412, 392, 394.

The largest limit of changes made from the line of defi-

nite location at any one place is four and one-half miles. P. Rec., 263. The changes were made, except in two or
301 three instances, where the local interests of communities along the line were consulted, from engineering considerations.

It appears from the testimony of Mr. Morris, a witness of very large experience, that when the work of construction is undertaken "it is almost always necessary to make changes from the original location, within reasonable limits, frequently called for by the curvature not being staked out on the original records and maps, and by changes necessary
302 to be made on account of bad marshes and lakes through which the original location ran, and which, on a close examination of the ground preparatory to construction, admitted of improvements being made." He says that such changes are permitted and approved of by the government when within reasonable limits, and that all of these changes were within reasonable limits. P. Rec., 265, 266.

In this connection it will be observed that both the map of definite location and the maps of construction, which
303 show the line as actually constructed, were duly filed both with the governor of the state and in the general land office at Washington, and on these maps the lands have been both certified to the state and conveyed to the company by the governor, all of which shows very clearly that the departures in question were within reasonable limits, and were permitted and approved of by both the state and United States authorities.

The congressional act of March 3, 1871, authorizing the
304 change in the lines, authorizes the location and construction of a "line from St. Cloud to a point of intersection *with the line of the original grant* at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent."

The evidence shows that the line of road as actually

located runs within fifteen and three-fourth miles of the Otter Tail Lake referred to. It will also be noticed, in this connection, that the secretary of the interior, in his letter of 305
December 28, 1871, enclosing the map of definite location to the commissioner, expressly says "that while on first examination he entertained doubts as to the conformity of the route with the requirements of the act of 1871, on account of its not intersecting *the line of the original grant* at or near Otter Tail or Rush Lakes, the nearest point of the route as amended being some miles distant from either of said lakes: but further reflection has convinced him that the new route is a substantial compliance with the terms of the 306
act." In addition to this recognition of the department, we call attention to the congressional recognition in the acts of March 3, 1873, and July 22, 1874, before referred to, and which expressly refer to the line as thus located. It will also be observed that, at the time of the passage of these acts, the work of construction was already completed so far as the lines are now constructed.

It also appears that as a temporary expedient to secure the business to Manitoba and the British settlements, and 307
which business was the Receiver's main source of revenue on the one hundred and four miles of road, he had permitted the use of some of the iron rails from his track near its extreme north end. For a full explanation of this matter, see the testimony of the witness Farley. P. Rec., 389, 390.

It also appears that neither company will be able to get its full quota of lands in Minnesota, giving it the full benefit of all the lands in controversy in the original bill. O. Rec., 634–634¾, 844, 845. 308

All questions as to conformity of the constructed line with the located line are questions between the United States and the company building, and the complainant cannot vicariously raise them in this litigation, as it plainly appears

that it has not been and will not be in any manner prejudiced thereby.

309 The entire line of road was completed in 1879, and accepted by the secretary of the interior (P. Rec., 539–544), where the matter of the deviations of the constructed line from the located line were brought to the notice of the secretary, and passed on by him, by a communication from the commissioner of the general land office. See, also, chapter 412 of special laws of Minnesota, confirming the title of the St. Paul, Minneapolis & Manitoba Company to the lands and road in as full and ample manner as the state could pos-
310 sibly do. P. Rec., 572.

Jesse P. Farley, receiver, one of the defendants to the original suit, has been discharged from his trust as such, by order of the court dated May 8, 1883. Defendant's Ev., B, 51. The trust of Wetmore, Denny and Pearsall has been fully executed, and all their interest, as well as that which the St. Paul & Pacific Railroad Company had, has been vested in the St. Paul, Minneapolis & Manitoba Railway Company by its purchase at the foreclosure sale and deed,
311 and confirmation thereof, so that the only parties who have any interest in the litigation are the Northern Pacific Railroad Company on the one hand, and the St. Paul, Minneapolis & Manitoba Railway Company on the other.

In this condition of affairs, upon petition of the last-named company, it was ordered that it have leave to become a party to the original suit by supplemental bill for the protection of its rights and interests involved in such suit. P. Rec., 580.

312 The supplemental bill was filed accordingly, in which the complainant therein claims the conveyance to it by the Northern Pacific Railroad Company of about 30,000 acres of land within the place limits of the grant for the St. Paul & Pacific Company's St. Vincent extension, which were, it

alleges, improperly patented to the Northern Pacific Railroad Company, January 18, 1873. The particular situation of these lands will appear from maps and diagrams in evi- 313
dence. See Supplemental Bill, P. Rec., 107–145; answer to it, 146–169.

After hearing the case, the court entered an interlocutory decree. P. Rec., 190; Opinion of Court, 172–185. A decree was directed for complainant "as to all lands in its place limits, and also within the limits of the withdrawal of October 12, 1870 (based on the *amended* location of general route), and dismissing the supplemental bill of the St. Paul, Minneapolis & Manitoba Railway Company at its costs, and 314
that the cause be referred to a master to report the lands coming within the limits named."

The proceedings before the master, and his report with schedules, appear at P. Rec., 191–219.

Before the master, the complainants' counsel requested him to report "in addition to the lands coming within the limits named, to wit, the place or twenty-mile limits of the Northern Pacific Railroad and the limits of the withdrawal of October 12, 1870, and also included in the schedule an- 315
nexed to the complaint in said cause, all other lands within those limits *not included in said schedule* and within the thirty and forty mile indemnity limits of the Northern Pacific Railroad, but not falling within the limits named in the opinion of the court in this cause."

To this request, and to the action of the master thereon, defendants' counsel interposed these objections, namely:

1. That the master shall not consider or report upon any lands not included in the schedule annexed to the bill of 316
complaint as corrected by the testimony of M. L. Knowlton.

2. That he shall not consider or report on any lands outside of the place limits of the Northern Pacific Railroad Company, unless they are shown to have been selected by

said company prior to the filing of the complaint in this action, to wit, March 15, 1875, and prior to the definite
317 location of the line of the St. Paul & Pacific Railroad, if within the ten-mile limits of that company, or prior to selection by that company if within its twenty-mile limits.

3. That he shall not consider or report on any lands between the thirty and forty mile limits of the Northern Pacific Railroad, unless in addition to the proof required in the second objection above noted, it is also shown that the Northern Pacific Railroad Company had a right to select such lands as indemnity under the conditions of the joint resolu-
318 tion of congress of 1870.

4. That he shall not receive or consider any evidence of selections by the Northern Pacific Railroad Company subsequent to the filing of the complaint in this action in the said court March 15, 1875.

No evidence of any selections outside of the place limits was produced. The master nevertheless reported:

First: Schedule "B," O. Rec., 448, being: "List of lands mentioned in schedule 'A' of lands annexed to com-
319 complaint and situated within twenty-mile or place limits of Northern Pacific Railroad, and within limits of St. Paul & Pacific Railroad Company, now St. Paul, Minneapolis & Manitoba Railroad Company."

Second. O. Rec., 461, schedule "C:" "List of lands mentioned in schedule 'A' of lands annexed to the complaint, situated *within thirty-mile indemnity limits* of Northern Pacific Railroad Company, within limits of withdrawal of October 12, 1870, and within limits of St. Paul & Pacific
320 Railroad, now St. Paul. Minneapolis & Manitoba Railway."

Third. Schedule "D," O. Rec., 466, being: "List of land mentioned in schedule 'A' of lands annexed to complaint and situated within *forty-mile indemnity limits* of Northern Pacific Railroad, and within limits of withdrawal

of October 12, 1870, and within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway."

Fourth. O. Rec., 470, schedule "E:" "List of lands 321
not in schedule "A" of lands annexed to complaint and situated within twenty-mile or place limits of Northern Pacific Railroad, and within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway."

Fifth. O. Rec., 483, schedule "F:" "List of lands not included in schedule 'A' of lands annexed to complaint situated within thirty-mile indemnity limits or withdrawal of October 12, 1870, and also within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba 322
Railway."

Sixth. O. Rec., schedule "G:" "List of lands not included in schedule 'A' of lands annexed to complaint situated within forty-mile indemnity limits of Northern Pacific Railroad, within limits of withdrawal of October 12, 1870, and within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway."

Seventh. O. Rec., 490, schedule "H:" "List of lands in schedule 'A' of lands annexed to complaint situate within 323
thirty-mile indemnity limits of Northern Pacific Railroad, and within limits of the St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway, but not within limits of withdrawal of October 12, 1870."

Eighth. O. Rec., 500, schedule "I:" "List of lands mentioned in schedule 'A' of lands annexed to complaint situated within forty-mile indemnity limits of Northern Pacific Railroad, within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway, but not 324
within limits of withdrawal of October 12, 1870."

Ninth. O. Rec., 503, schedule "K:" "List of lands not included in schedule 'A' of lands annexed to complaint within twenty-mile indemnity limits of Northern Pacific

Railroad, and within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway, but not
325 within limits of withdrawal of October 12, 1870."

Tenth. O. Rec., 506, schedule "L:" "List of lands not included in schedule 'A' of lands annexed to complaint, and not within limits of withdrawal of October 12, 1870, but within forty-mile indemnity limits of Northern Pacific Railroad, and also within limits of St. Paul & Pacific Railroad, now St. Paul, Minneapolis & Manitoba Railway."

The report of the master shows all the testimony that was produced. O. Rec., 447. There is nothing in the
326 record to show where the master got his information upon which to base the reports of selections given by him in O. Rec., 461, schedule "C;" O. Rec., 466, schedule "D;" O. Rec., 483, schedule "F;" O. Rec., 489, schedule "G;" O. Rec., 490, schedule "H;" O. Rec., 500, schedule "I;" O. Rec., 503, schedule "K."

We are quite certian there was no proper testimony whatever to justify any such report. Accordingly exceptions were taken to the report. P. Rec., 508, 518.

327 *First.* That the master has included in his report in schedule "C" a list of lands as belonging to complainant which it appears from said report consists of lands *in the thirty-mile indemnity limits* of the grants to the Northern Pacific Railroad Company, and which have been patented and conveyed to it and are embraced in the list of lands annexed to the original bill of complaint herein, as corrected, without any proof whatever that said lands, or any part thereof, have ever been selected by said Northern Pacific
328 Railroad Company as indemnity lands under its alleged grant.

Second. For that the master has included in his report, in schedule "D" thereto annexed, a list of lands as belonging to the complainant which it appears from said report

consists of lands in the *forty-mile indemnity limits* of the grant to the Northern Pacific Railroad Company, and which have been patented and conveyed to the St. Paul & Pacific 329
Railroad Company and are embraced in the list of lands annexed to the original bill of complaint herein as corrected, without any proof that said lands, or any part thereof, have been selected by said Northern Pacific Railroad Company to make up any deficiency along the line of its road to the amount or for lands that had been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of congress July 2, 1864, and without proof of the selection of the 330
same by said Northern Pacific Railroad Company in any way or manner whatever known to the law.

Third. For that the said master has included in his report in schedule "F" thereof a list of lands as belonging to said complainant which it appears from said report consists of lands within the place limits of the grant to the Northern Pacific Railroad Company and not included in the schedule of lands annexed to the bill of complaint herein, but which are located, as appears from said report, within the limits of 331
the St. Paul & Pacific Railroad Company, the present St. Paul, Minneapolis & Manitoba Railway Company, without any proof whatever that the same, or any part thereof, have been patented or conveyed to the defendants in this cause, or any or either of them, or to the said St. Paul, Minneapolis & Manitoba Railroad Company.

Fourth. For that the said master has included in his report in schedule "F" thereof a list of lands as belonging to said complainant which it appears from said report consists 332
of lands within the thirty-mile indemnity limits of the grant to the Northern Pacific Railroad Company and not included in the schedule of lands annexed to the bill of complaint herein, as corrected, without any proof whatever that the

same, or any part thereof, have been patented (selected) to the Northern Pacific Railroad Company in any way or man-
333 ner whatever known to the law prior to the commencement of this action.

Fifth. For that the said master has included in his report in schedule "G" thereof, a list of lands as belonging to the said complainant, which it appears from said report consists of lands within the forty-mile indemnity limits of the grant to the Northern Pacific Railroad Company, and not included in schedule of lands annexed to the bill of complaint herein, as corrected, without any proof whatever that
334 the same, or any part thereof, were ever patented or conveyed to the defendants in this cause, or any or either of them, and without any proof that the same or any part thereof had been selected before the commencement of this suit by the said Northern Pacific Railroad Company to make up any deficiency along the line of its road to the amount of or for lands that have been sold, granted, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of
335 congress July 2, 1864, in any way or manner whatever known to the law.

Sixth. For that the said master has erroneously, and without any authority whatever, included in his report herein *lands within the indemnity limits of the grant to the Northern Pacific Railroad Company, both within the thirty and forty-mile limits not selected by it in any way or manner known to the law*, prior to the commencement of this suit, to wit: the lands mentioned in schedule "C," "D,"
336 "E," "F" and "G."

Seventh. For that the said master has erroneously, and without any authority whatever, included in his report herein lands within the indemnity limits of the grant to the Northern Pacific Railroad Company, both within the thirty and

forty-mile indemnity limits, that have not, nor has any part thereof, been patented or in any manner conveyed to the defendants in this suit, or any or either of them. 337

Eighth. For that the said master has erroneously and improperly, and without any authority therefor, reported in schedules "H," "I," "K" and "L," lands the description of which is noted in red ink, the selection of which appears to have been made of lands thereon described, since the commencement of this suit, and without any proof that said lands, or any part thereof, contained in said schedules "H," "I," "K" and "L," or either of them, have been patented in whole or in part to the defendants in this suit, or any or 338 either of them.

Ninth. For that there was no proof produced before said master to show that any definite location of the entire line of the route of the road of the Northern Pacific Railroad Company had been or was made before the commencement of this suit, or before the making of the several selections of lands from the thirty and forty-mile indemnity limits of the grant claimed by said company reported by said master to this court, or any or either of them. 339

Tenth. For that no proper, or competent, or any testimony was produced before said master to show the definite location of any part of the line, or definite location of the road of said Northern Pacific Railroad Company, prior to the commencement of this suit.

After the report of the master was made, the complainant asked leave to amend its bill, by incorporating therewith the description of lands embraced in the schedules "E," "F," "G," "K" and "L" of the report of the master, together 340 with proper averments referring thereto, so that the bill of complaint might conform to the evidence and decision in said cause. P. Rec., 223.

The court *overruled the first, second, ninth and tenth* ex-

ceptions, and sustained the third, fourth, fifth, seventh and eighth, and *overruled the sixth exception* "in so far as the
341 same relates to the lands in schedules "C" and "D," of said report, and sustained it in so far as it relates to the lands in schedules "E," "F" and G." O. Rec., 527, 531. And thereupon entered final decree herein in favor of said complainant, as stated. O. Rec., 533–539, with schedules annexed from 539 to 579.

After proceedings for severance as against Jesse P. Farley, receiver (O. Rec. 575–588), the defendants, the St. Paul & Pacific Railroad Company, and Jacob S. Wetmore,
342 Thomas Denny and Thomas W. Pearsall, trustees, etc., and the St. Paul, Minneapolis & Manitoba Railway Company prayed an appeal, which was allowed and duly perfected. An order was made for the transmission to and production in the supreme court for use at the hearing of the appeal of the maps and plats used in evidence in this cause. O. Rec., 596, 596½.

The appellants assign the following errors, namely:

First. The circuit court erred in deciding and holding
343 and in adjudging in and by its interlocutory decree that a decree be extered in favor of the complainant, the Northern Pacific Railroad Company, as to all lands within its place limits, and also within the limits of the withdrawal of October 12, 1870. O. Rec., 437.

Second. The circuit court erred in directing in said decree and in adjudging and decreeing in and by the final decree herein, that the bill of the St. Paul & Minneapolis Railway Company be dismissed (O. Rec., 438), and that
344 all relief prayed thereunder, in respect to the lands therein described and claimed by said last-named company, be denied. O. Rec., 538.

Third. The circuit court erred in overruling the said first exception to the master's report and in decreeing in its

final decree accordingly (P. Rec., 225, 220, 226); which said exception is as follows: "That the master has included in his report in schedule 'C' a list of lands as belonging to 345
complainant which it appears from said report consists of lands *in the thirty-mile indemnity limits* of the grants to the Northern Pacific Railroad Company, and which have been patented and conveyed to it and are embraced in the list of lands annexed to the original bill of complaint herein, as corrected, without any proof whatever that said lands, or any part thereof, have ever been selected by said Northern Pacific Railroad Company as indemnity lands under its alleged grant." 346

Fourth. The circuit court erred in overruling the said second exception to the master's report and in decreeing in its final decree accordingly (P. Rec., 220, 225, 226); which said exception is as follows: "For that the master has included in his report, in schedule 'D' thereto annexed, a list of lands as belonging to the complainant which it appears from said report consists of lands in the *forty-mile indemnity limits* of the grant to the Northern Pacific Railroad Company, and which have been patented and conveyed to the 347
St. Paul & Pacific Railroad Company and are embraced in the list of lands annexed to the original bill of complaint herein as corrected, without any proof that said lands, or any part thereof, have been selected by said Northern Pacific Railroad Company to make up any deficiency along the line of its road to the amount or for lands that had been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of congress July 2, 1864, and without proof 348
of the selection of the same by said Northern Pacific Railroad Company in any way or manner whatever known to the law."

Fifth. The circuit court erred in overruling the ninth exception to the master's report and in decreeing in its final
349 decree accordingly. P. Rec., 222, 225, 226.

Sixth. The circuit court erred in overruling the said tenth exception to the master's report and in decreeing in its final decree accordingly. P. Rec., 222, 225, 226.

Seventh. The circuit court erred in overruling the said sixth exception to the master's report in so far as it relates to schedules "C" and "D" of said report, and in decreeing in and by its final decree accordingly (P. Rec., 222, 225, 226); which said exemption is as follows: "For that
350 the said master has erroneously, and without any authority whatever, included in his report herein *lands within the indemnity limits of the grant to the Northern Pacific Railroad Company, both within the thirty and forty-mile limits not selected by it in any way or manner known to the law*, prior to the commencement of this suit, to wit, the lands mentioned in schedule 'C,' 'D,' 'E,' 'F' and 'G.'"

Eighth. The circuit court erred in decreeing that the complainant has acquired and become owner of a good
351 and lawful estate as of fee-simple absolute in and to the lands described in schedules "B," "C" and "D," annexed to said decree. O. Rec., 534, 539–574.

Ninth. The circuit court erred in decreeing that the defendants have not, nor has any or either of them, or the successors or assigns of any or either of them, any right or lawful claim or title or claim in or to any of the said tracts or parcels of land or in or to any part of the same, described in said last-named schedules. O. Rec., 534.

352 *Tenth.* The circuit court erred in decreeing that all the patents, certificates and conveyances executed as stated in said decree to the state of Minnesota, or the St. Paul & Pacific Railroad Company, or for the use or benefit of any of its successors or assigns, were and are wholly unauthor-

ized, and that any and all legal title in or to any of the said tracts of land or any part thereof which the St. Paul & Pacific Railroad Company or its successors or assigns, or any 353
or either of them, may have acquired through any certificate, patent or conveyance named in said decree, be transferred to and vested in the Northern Pacific Railroad Company and its successors and assigns without further act or deed. O. Rec., 534, 535.

Eleventh. The circuit court erred in decreeing a perpetual injunction in respect to said lands and the title thereto, as specified in said decree. O. Rec., 535.

Twelfth. The circuit court erred in adjudging and de- 354
creeing as specified in each and all the provisions of the first paragraph or division of said decree. O. Rec., 534–536.

Thirteenth. The circuit court erred in adjudging and decreeing to the said complainant, in manner and form as aforesaid, the lands described in schedule "C" in the report of the master, the same being claimed as indemnity and not place lands.

Fourteenth. The circuit court erred in decreeing in like manner the lands described in schedule "D" of the report 355
of the master, the same being claimed as indemnity lands, there being no proof of any selection thereof as required by law.

Fifteenth. The circuit court erred in decreeing to the complainant as aforesaid lands described in schedules "C" and "D" of said master's report in manner and form aforesaid, the same being both within the thirty and forty-mile limits; said lands not having been selected by it in any manner known to the law prior to this suit, and such selections as 356
are claimed not having been approved by the secretary of the interior.

Sixteenth. The circuit court erred in all and singular the provisions and portions of said decree in relation to the

moneys and contracts, the proceeds, etc., of lands sold by the special commissioner, in so far as it awards and decrees to
357 the said complainant the same or any part or portion thereof or any interest therein (O. Rec., 536–537), being the second paragraph or division of said decree.

Seventeenth. The circuit court erred in dismissing said complainant's bill without prejudice, as to all lands mentioned and described therein not awarded by the decree to the complainant, as mentioned in the fourth paragraph or division thereof. O. Rec., 538.

Wherefore the said appellants, for these and divers other
358 errors appearing upon the face of the said record and decree, pray that the said decree may be reversed, and they restored to all and singular the rights and interest in the premises of which they have been deprived thereby, etc.

It has been thought advisable to make the foregoing statement of the case more elaborate, perhaps, than is really necessary to a proper determination of it. In the subsequent points and arguments this statement will be referred to by folios, thus: "St., fol., etc."

359

POINTS AND ARGUMENT.

The general question in this cause is, whether the grant to the complainant in respect to the lands in question is paramount to the grant under which the defendants claim. Or, to state it more accurately, whether these lands were included at all, within the grant to the complainant. We claim that they were not.

The granting acts were passed in the following order:

1. The grant of March 3, 1857, under which the defendants claim. 11 U. S. Stat., 195.

2. The grant of July 2, 1864, under which the complainant claims. 13 U. S. Stat., 365.

3. The act of March 3, 1865, increasing the grant of March 3, 1857, under which the defendants claim. 13 U. S. Sta., 526.

4. The joint resolution of congress of May 31, 1870, giving to the complainant additional indemnity limits, and for other purposes. 16 U. S. Stat., 370.

5. The act of March 3, 1871, authorizing the change of line of the St. Paul & Pacific Railroad Company, in consideration of a relinquishment of lands, etc. 16 U. S. Stat., 588.

The grants under consideration are grants in place, by *specific description* and not grants of quantity. In this respect they do not materially differ.

> *Barney v. Winona, etc., Railroad Co.*, 117 U. S., 230, 231, 232.

I.

Provisions of Complainant's Grant and Construction Thereof.

The burden of establishing that the complainant's grant is prior and paramount is on it, and no presumption can be indulged in upon any point to aid it. It must obtain relief, if at all, upon the strength of its own title. It must show that, as to the lands in question, "at the time the line of said road was definitely fixed and a plat thereof filed in the office of the commissioner of the general land office," which was November 21, 1871, that the United States then "had full title thereto; (1) that they had not been reserved, (2) sold, (3) *granted* or (4) *otherwise appropriated*, and (5) free from pre-emption or other claim or rights." Failing to show either of these several propositions (except as to *sales* or *entries* or *pre-emptions* made after the general route

was fixed according to the provisions of the sixth section of the grant), the complainant utterly fails in its case. For lands to which the United States had not full title at that date, that is to say, (1) lands that had been before then reserved to any other use; (2) that at that date had been *granted* to any one else, or to any other use or purpose; or (3) had been sold, entered or (4) pre-empted prior to the fixing of the general route of the road, or (5) lands to which at that date any other claim or right had attached, were not within the terms of the grant; were not within its general scope, plan or purpose. The grant did not apply to such lands. They were excluded from its operation as clearly and as certainly as the even-numbered sections reserved to the United States. Under the grant to the complainant of July 2, 1864, there was continued in full force and operation all the methods of selling, appropriating or disposing of the public lands under the general land laws, and of granting them by act of congress, and of reserving them by any means whatever to any other use or purpose. The act employed every term known to the terminology for the disposition of the public domain; and this condition of affairs was to continue until the line of *general* route was fixed, when the right of disposition by sale or entry or pre-emption of odd-numbered sections within twenty miles on either side of such line was to cease; but all other methods of reservation or disposition were to continue as before, until the "line of said railroad is definitely fixed and a plat thereof filed in the office of the commissioner of the general land office."

This *statutory* withdrawal did not in the least interfere with the power of the United States to grant, reserve or otherwise dispose of or appropriate such lands, save by sale, entry or pre-emption. It was the plan, policy and purpose of the reservation in the sixth section to suspend the disposition of lands to actual settlers or speculators, within the

limits prescribed in that section. It had no other purpose or object whatever. It did not and could not withdraw lands from the operation of *our prior grant* of March 3, 1857, nor from the operation of the act of March 3, 1865, increasing it. The effect of filing a map of *general* route did not vest any right in or to, any lands in the Northern Pacific Company.

"This action does not, like the filing of the line of definite location, vest in the company a right to any specific land. It establishes no claim to any particular section with an odd number."

Kansas Pac. R'y Co. v. Dunmeyer, 113 U. S., 636, 637.
Mo., Kan. & Texas R'y Co. v. Kansas Pac. R'y Co., 97 U. S., 498.
Butz v. Northern Pac. R. R. Co., 119 U. S., 71–73.

The fixing of the *general route* of the road of the Northern Pacific Company, under the sixth section of its charter (St., fol. 55), and the provision of that section that "The odd sections of land *hereby granted* shall not be liable to *sale* or *entry* or *pre-emption* before or after they are surveyed, except by said company as provided in this act," did not serve to reserve, or authorize the withdrawal of any lands for the benefit of the Northern Pacific Company, that had been before then granted to the territory or state for the benefit of the branch road to St. Vincent, or that would fall within the place limits of its grant when located.

The withdrawal under section 6 of the complainant's grant of lands from *sale* or *entry* or *pre-emption* did not and could not withdraw them from the operation of our *prior grant*. This is made plain by the recent case of *Kansas Pacific Railway Co. v. Dunmeyer*, 113 U. S., 629, 637, *et seq.*

Of the act granting lands to the complainant, this court has said:

"The act of congress not only contemplates the filing by the company in the office of the commissioner of the general land office a map showing the definite location of the line of its road, and *limits the grant* to such alternate odd sections as have not at that time been reserved, sold, *granted* or otherwise appropriated, and are free from pre-emption, grant, or other claims or rights; but it also contemplates a preliminary designation of the general route of the road, and the exclusion from *sale, entry or pre-emption* of adjoining odd sections within forty miles on each side until the definite location is made."

Butz v. Northern Pacific Railroad Co., 119 U. S., 55, 71.

The act provides for fixing a general route and for survey of the lands, and that the odd sections granted shall not be liable to *sale, entry* or *pre-emption* before or after they are surveyed, except by the company.

"When the *general* route of the road is thus fixed in good faith, and information thereof given to the land department by filing the map thereof with the commissioner of the general land office, or the secretary of the interior, the law withdraws from *sale* or *pre-emption* the odd sections to the extent of forty miles on each side." (Twenty miles in the state of Minnesota.) "The object of the law in this particular is plain. It is to preserve the land for the company to which, in aid of the construction of the road it is granted." *Idem*, 72.

This general language must be considered in respect to the case before the court, that of the validity of a *pre-emption*, the land having been withdrawn from the operation of the pre-emption laws, by the act. *Idem*, 72, 73.

"Although the act does not require the land department to give notice to the local land officers of the withdrawal of the odd sections from sale or pre-emption, it has been the practice of the department in such cases to formally withdraw them. It cannot be otherwise than the exercise of a wise precaution of the department to give such information

to the local land officers as may serve to guide aright those seeking *settlements* of the public lands, and thus prevent settlements and expenditures connected with them which would afterwards prove to be useless."

The third and sixth sections must be construed together. The latter covers only a small part of the ground of the former. On this subject the court says:

"Nor is there anything inconsistent with this view of the sixth section making the grant operative only upon such odd sections as have not been reserved, sold, *granted* or otherwise appropriated, and to which pre-emption and other rights and claims have not attached, when a map of the *definite* location has been filed. The third section does not embrace sales and pre-emptions in cases where the sixth section declares that the land shall not be subject to sale or pre-emption. The two sections must be so construed as to give effect to both, if that be practicable." *Idem*, 72, 73.

The grants are to receive such construction as will carry out the intention of congress.

"To ascertain that intent we must look to the *condition of the country* when the acts were passed, as well as to the purpose declared on their face, and read all parts of them together."

Winona & St. Peter Railroad Co. v. Barney, 113 U. S., 625.

And the general history, the public facts in relation to these enterprises, as well as what had been done by the grantees of the United States to carry them out, congress is supposed to have had in mind when legislating in reference thereto, and these facts it is important to consider in construing the acts of congress under which the parties claim.

Platt v. Union Pac. R. R. Co., 99 U. S., 48, 64.
Railway Co. v. Alling, 99 U. S., 473, 474.

The history of the legislation of congress and of the state of Minnesota on the subject is to be taken and construed

as in *pari materia* in solving the question at issue, and it is not to be supposed that congress was ignorant of important stipulations and transactions between the respective railroad companies.

Kansas City, etc., R. R. Co. v. Attorney-General, 118 U. S., 682, 689, 690, 691.

The question is not to be determined upon any technical, narrow view of the case, but upon a fair and liberal construction, with a view to accomplish the purpose congress evidently had or must be presumed to have had.

Again, it must be borne in mind in construing the acts of March 3, 1865, and March 3, 1871, that congress had the power to alter or amend the grant of the Northern Pacific Railroad Company at any time before it had built any road, even independent of the reservation of this power in section 20 of the original act, and section 2 of the Joint Resolution of May 31, 1870, and there is no pretense that any part of the road was built before the act of March 3, 1871, was passed; at least there is no evidence in the record to justify any such conclusion.

In *Northern Pacific Railroad v. Traill County*, 115 U. S., 609, it was held that the clause authorizing congress "to add to, alter, amend or repeal the act of 1864 clearly conferred this power on congress, especially when exercised, as in this instance, before the company had built a mile of road or earned an acre of land, or in any way secured an equitable right to the lands."

Sinking Fund Cases, 99 U. S., 700, 719.

The original grant of March 3, 1857, to the territory of Minnesota was, as we have said, for *a system of roads*,— for a *state system*, specially designed to develop and promote the interests of the state;— it was made to the territory or future state. St., fol. 20, 26. It was made pursuant to a policy inaugurated in 1856, and continued for many years

afterwards; and under these grants it was left for each state to apply the lands and shape and control its own railroad policy. In 1864 the policy was inaugurated of increasing in the northwestern states, all the grants to the several states from six alternate sections per mile to ten. When the grant to the Northern Pacific Company was made, July 2, 1864, the six-mile grants in Michigan, Wisconsin, Iowa, and perhaps Missouri, had all been increased from six alternate sections to ten per mile, and three several propositions or measures were then pending for a similar increase of the grants to Minnesota, to put them on an equality with the neighboring states. At about that time the policy of making extensive grants to corporations composed of private adventurers, to construct important and extensive lines, was adopted. And in this connection it is material to observe that congress, by the cautious wording of the grant to the Northern Pacific Company, reserved to itself and to the land department, beyond any question or imputation of bad faith to the Northern Pacific Company, the complete power of disposal over all the public lands *within the probable range of the grant*, until the line of *general* route was fixed, when sales and entries by pre-emption were to cease, but *all other methods* of disposition by the United States were to continue until the definite line of location was fixed and filed according to the third section. The grant *could not attach* to any lands except in pursuance of these provisions. The terms in which the grant was originally framed in the house and the amendments made to it, and insisted on in the senate, and finally adopted, upon a conference (St., fols. 69–74), show that the words restricting the operation of the grant were inserted in view of the policy and purpose we have suggested, and that the language in question was used *ex industria*, and from abundant caution.

For all lands in the meantime lost to the grant by reason

of any of said sections or parts of sections having been "*granted*, sold, reserved, occupied by homestead settlers or pre-empted, *or otherwise disposed of*, other lands shall be selected by said company under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections;" and indemnity for losses *thus incurred after* the passage of the original act and before the *definite* location of the line was given by the joint resolution of May 31, 1870. The indemnity limits, under both acts, for losses thus incurred, are an entirety and continuous to the western terminus of the line. Besides, it is to be observed that an early location of the line of *definite* location would arrest this power of disposition on the part of congress. There was then nothing inequitable in this discrimination, if such it can be called, against a company of private adventurers in favor of the development of the *state system* of railroads in Minnesota, and for the benefit of which the acts of March 3, 1857, and March 3, 1865, and March 3, 1871, were passed.

And it is to be observed, also, that the act further provides that, if the route of the Northern Pacific Road "shall be found upon the line of any other railroad route to aid in the construction of which lands have been *heretofore granted* by the United States as far as the routes are upon the same general line, the amount of land heretofore granted *shall be deducted* from the amount granted by this act." For what might be lost under this proviso *no indemnity whatever was provided*. But for what might be lost to its grant on account of the other limitations, for lands before the definite location, namely: 1. Lands *granted*. 2. Lands sold. 3. Lands reserved. 4. Lands occupied by homestead settlers. 5. Lands pre-empted. 6. Lands otherwise disposed of,—indemnity lands were to be selected, etc. As to lands sold, entered, or pre-empted, this right of indemnity was modified by the reservation or statutory withdrawal in section 6 upon fixing the *general* route of the road so that no lands in the proba-

ble granted limits could thereafter be "sold, entered or pre-empted."

We have seen that this withdrawal was a statutory one; that no right on the part of the Northern Pacific Company by reason of it attached to any particular section.

"This action does not, like the filing of the line of definite location, vest in the company a right to any specific land. It establishes no claim to any particular section with an odd number."

Kansas Pacific Ry. Co. v. Dunmeyer, 113 U. S., 636, 637.

Mo., Kansas & Texas Ry. Co. v. Kansas Pacific Ry. Co., 97 U. S., 498.

Butz v. Northern Pacific R. R. Co., 119 U. S., 71–73.

As declared by Mr. JUSTICE HARLAN in the recent case of *Wisconsin Central Railway Co. v. Forsythe*, — Fed. Rep. —:

"The lands embraced in the withdrawals . . . belonged to the United States. It had never parted with its interest in them, nor lost its right *to control them absolutely*. Its title to them was complete, because (as shown by adjudged cases) although withdrawn from sale or location . . . the title, the right of property of the United States, remained unaffected. . . . In every sense, therefore, they were by competent authority reserved to the United States; that is, retained by the United States as lands not granted, and therefore as its property. The withdrawal of them from sale or location under the general laws providing for the administration of the public domain was a reservation of them by and to the United States."

This, though said in respect to a withdrawal for indemnity purposes is equally applicable to this statutory withdrawal.

The grant to the Northern Pacific Railroad Company is the first one made with the peculiar and very extensive limitations on it which have been noticed.

Several other grants were soon after made containing the same peculiar limitations, and all were framed, it is submitted, in pursuance of a general policy on the subject already pointed out.

1. The grant of July 13, 1866 (2 Lest. Land Laws, 173), for the Placerville & Sacramento Valley Railroad Company.

2. That of July 25, 1866 (2 Lest. Land Laws, 187, sec. 2), for Central Pacific & Portland Railroad Company; the word "granted" being in the clause for indemnity lands.

3. The grant for the Atlantic & Pacific Railroad Company, July 27, 1866 (sec. 3, 2 Lest. Land Laws, 197).

4. The grant for the Stockton & Copperopolis Railroad, March 2, 1867 (sec. 2, 2 Lest. Land Laws, 210).

5. The grant of the Southern Pacific Railroad, act of March 3, 1871, sec. 23, referring in section 23 to the above act of July 27, 1866 (Copp's Land Laws, 100).

These limitations were not casual or accidental. The word "granted" as used in them is not an idle or unmeaning word. It signifies lands donated by the United States by act of congress for purposes of public internal improvements, and for lands so granted within the limits of withdrawal under the sixth section for other such uses, indemnity was provided in section 3, and after the enlargement of the grant of March 3, 1857, by the act of March 3, 1865, an additional indemnity strip of ten miles on each side of the former limits of the Northern Pacific Company as defined in section 3 of its grant, were provided for it by the joint resolution of congress of May 31, 1870, to compensate it "to the amount of the lands that have been *granted*, sold, reserved or occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of July 2, 1864," *at the time of the final location* of the main line.

It was a geographical impossibility for the Northern Pacific Company, after the grants to Minnesota of March 3, 1857, as increased by the act of March 3, 1865, under which we claim to make a location either of general route or definite location of its line, without crossing the line of the float granted or grant extending from St. Paul to St. Vincent on the international boundary line. Our grant as thus increased was prior and paramount to that of the Northern Pacific Company. Priority of definite location of its line, which it did not have, could not aid it. And location of its general route and withdrawal by section six of its grant could not overreach our grant, either as to the original quantity which antedates its grant, or as to its enlargement by act of March 3, 1865, because its grant could not attach to anything to which the United States did not have full title, etc., when it made its *definite* location November, 1871, and the withdrawal by reason of filing the line of its general route on the 12th day of October, 1870, was more than five years after the enlargement of our grant. And the grant of the Northern Pacific Company does not, when definitely located, relate back to its date so as to overreach any grant made before the definite location of its line which would inevitably cross or overlap any location it was possible for it to make. Priority of right within such crossing or overlap of grants is, with the grant to the state and not with that of the Northern Pacific Company. When our grant or grants were finally located they related back to the date or dates of the acts of March 3, 1857, and March 3, 1865, while the title of the Northern Pacific Company could have no relation to any date prior to the definite location of its line.

The grants in question, when their respective limitations are considered and they are applied to the subject-matter upon which they were to operate and between their respective termini, show beyond dispute the priority of our rights.

We are not under any necessity of showing that there was any intention on the part of congress to reserve land to be thereafter granted in aid of our road. The language of our grants carries the lands in question with title relating to their dates, and when these respective acts were passed no right whatever had attached or vested to an acre of these lands in favor of the Northern Pacific Company. And *no reservation or withdrawal* whatever had been made of any lands for the Northern Pacific Company, to prevent the plain and ordinary operation of our grants upon the lands in the conflicting limits, as held by all the cases on the subject, with relation to the dates of our respective acts of March 3, 1857, and March 3, 1865.

The reservations in these acts is (Act March 3, 1857, sec. 2): "That any and all lands *heretofore reserved* to the United States by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act." Act March 3, 1865, sec. 3: "That any and all lands *heretofore reserved* to the United States by any act of congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as may be found necessary to locate the route of said road through such reserved lands."

At the date of the act of March 3, 1865, no lands had been reserved to the United States by act of congress or in any other manner by competent authority, for the purposes of the road of the Northern Pacific Company. There was provision for reserving lands conditionally for it, upon filing the line of its general route. This was not filed until more

than five years after the act of March 3, 1865, was passed. And these lands thus claimed are not within the descriptive terms of its grant, but are excluded from it by its express limitations.

Theirs may be a grant *in presenti* also, but the sections or parts of sections *granted*, sold, reserved or occupied by homestead settlers or pre-empted or otherwise disposed of, at the time of filing the line of definite location of its road as provided in this section, clearly would not pass to the company. It could only take what then remained, and its grant *in presenti* was such only *as to what was left*, namely, that portion of the lands within the specified limits to which the grant might thereafter attach or upon which it might operate, as determined by events occurring after the grant and before such definite location. Had the grant to the Northern Pacific Company been in the terms of the acts of 1857 and 1865, instead of the terms actually employed in the act of July 2, 1864, as amended May 31, 1870, its contention would be more plausible than under the phraseology actually used, but clearly untenable, under repeated decisions of this court. Congress seems to have used, in view of the facts and conditions existing when this grant was made, *ex industria*, the most clear and precise language possible to exclude the contention made in behalf of that company.

We submit that the grant could not attach to any land until the definite location of its line, and that its title could not have applied to it the doctrine of relation as against rights acquired within the language of the limitations of its grant, so as to overreach or subvert them.

But it is urged that the grant to the Northern Pacific Railroad Company is one by words of present grant — is a grant *in presenti*. And so are all the land grants that have been made grants *in presenti;* but these grants are grants *in presenti, sub modo*, only.

Those made by the formula in use down to 1862, and of which the one of March 3, 1857, under which we claim, is an instance, do not grant title *in presenti* or otherwise to lands the United States had sold or otherwise disposed of prior to the date of such grants; nor to lands sold or to which pre-emption rights had attached, after the date of the grant and before definite location. By reason of facts occurring before and after the grant, and while it is a mere float, the grant does not take effect upon them. As to lands sold or pre-empted after the act takes effect, and as to lands within its limits when located, but reserved before its date, the grant, though *in presenti*, does not take effect. As to those lands not reserved, and not sold or pre-empted at the date of the grant, it takes effect *in presenti*, conditionally, in case they are not thereafter sold or pre-empted before the line of the road is definitely located. The fact the that grant is one *in presenti*, or by words of present grant is not decisive at all.

Had all these grants been put in the formula of the grant to the Northern Pacific Company, the grant would have been of "every alternate section of land designated by odd numbers, six sections in width on each side said road not sold or to which the right of pre-emption has not attached at the time the line or route of said road is definitely fixed and a plat thereof filed in the office of the commissioner of the general land office, with indemnity," etc., but the effect of the grant in this form would have been precisely the same as in the terms in which these first grants were expressed.

Accordingly, if the grant to the Northern Pacific Company had been put in the earlier form in use it would have read thus: "Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty sections per mile on each side of said railroad and branches;

but in case it shall appear that the United States have, when the lines or routes of said road and branches are definitely fixed, *granted*, sold, reserved any of said sections or parts of sections, or the same are occupied by homestead settlers or pre-empted or are otherwise disposed of, then it shall be lawful," etc., to select as indemnity other lands in lieu thereof, under the direction of the secretary of the interior.

What the Circuit Court Decided.

The circuit court held that the withdrawal along the amended line of general route of October 12, 1870, operated to secure to the Northern Pacific Company: 1. The odd-numbered sections on either side of the line of its definite location, and also all lands within the limits of the said withdrawal of October 12, 1870, whether within its place limits or within its original indemnity limits, or within its increased indemnity limits under the act of May 31, 1870. Hence, of the lands that had been conveyed to the Saint Paul & Pacific Railroad Company, the court decreed to the Northern Pacific Company: 1. Lands in Schedule B., situated within twenty miles or place limits of the Northern Pacific Company. Orig. Rec., 419, 448–461, 539–558.

2. All of said lands within the thirty miles indemnity limits of the Northern Pacific Company, and within said withdrawal of October 12, 1870, without any proof of selection of same or approval of such selections (Orig. Rec., 461–466), notwithstanding defendants' first exception. Orig. Rec., 510, 558–568.

3. All such lands within the forty miles or increased indemnity limits of the Northern Pacific Company and within said withdrawal of October 12, 1870, and without proof of selection of same or approval of any selections thereof (Orig. Rec., 466–470), notwithstanding defendants' second exception. Orig. Rec., 568–574, 534.

The court evidently proceeded on the theory that the withdrawal of October 12, 1870, *conferred* on the Northern Pacific Company some *legal or equitable* title to said land.

This we submit, for the reasons already given, was wholly erroneous. Most clearly so as to classes two and three above stated, for want of proof of selection and approval.

Wisconsin Central Railroad Company v. Price County, 133 U. S., 496.

Reasons of Court Below.

We must be permitted to decidedly dissent from the reasoning of the circuit court (26 Fed. Rep., 557, 558), which gives to the limitations in section 3 of the grant of the Northern Pacific Company only the same force and effect as those contained in the grant under consideration in *Mo., Kan. & Tex. R'y Co. v. Kansas Pac. R'y Co.*, 97 U. S., 497. In the first place, the limitations here in question are broader and contain very important words, not embraced in the other, to which due effect must be given; and it is wholly inadmissible, as it seems to us, to say that limitations thus expressed are to have no other meaning than limitations in which they are not contained. It is, as it seems to us, simply an unjustifiable assumption to say that by this use of entirely different and more comprehensive and exact language congress did not intend anything; that notwithstanding the use of the language we have already pointed out leading to a different conclusion, that yet it was intended that the grant of the Northern Pacific Company should be operative as and from its date upon all lands within its territorial limits. From the earliest period in the history of land grants, lands *sold and pre-empted* have invariably been excluded from the descriptive words of the grants, just as in this case lands "granted" are excluded. The language

used in section 3 of the granting act in question simply extends the class of lands to be so excluded, and what lands are so excluded depends upon the condition of things at the time of filing the line of definite location. Now, what did congress mean? What did the senate committee on public lands intend by the amendments to this bill, which were adopted in the senate and ultimately in the house? The bill *as introduced* (St., fols. 69, 70) was framed so as to grant "ten alternate sections of land per mile on each side of the railroad wherever it passed through any state and wherever on the line thereof the United States have *full title and free from pre-emption or other claims or rights* at the time the line of said road is definitely fixed." The committee on public lands thought proper to insert language by way of exposition and explication of the phrase "full title," etc., and added for that purpose the words "not reserved, sold, *granted* or otherwise appropriated," as expressing more clearly the cases in which limitations on the grant were to exist. This was added by defining what should be considered a want of full title, namely, if any lands had been reserved, if any lands had been sold, if any lands had been *granted*, or if any had been otherwise appropriated, they were not to be within the grant. This language coming from the committee on public lands, familiar with the terminology of the land laws and of the methods for disposing of the public lands, shows the word "granted" was used not only in its technical sense, but in a sense that it has in its popular use, as meaning a title to public lands conferred directly by an act of congress. There is no other way of granting title within the sense of the term as here used, because all the other methods of disposing of lands by the operation of the general land laws are expressed in addition thereto. Then, too, the attention of the committee preparing these amendments was specifically directed to the meaning of the word

"granted" in the clause giving indemnity where *that single word* was introduced by an amendment that had *no other scope or purpose*, and it is the first case enumerated in which the company was to have indemnity: "If any of said sections or parts of sections shall have been *granted*, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands shall be selected," etc. Most assuredly it was competent for congress to accomplish the precise purpose we impute to this act. This is conceded. There was nothing unjust or inequitable in it. Indemnity was provided, and, besides, the making of subsequent grants and the operation of the land laws could be excluded at once by a prompt, definite location of the line. There is really no conceivable reason why the language should not have its fair and natural meaning in view of the existing facts and circumstances to which we have heretofore referred, and the subject-matter with which congress was dealing, and its relation to the *state system of railroads* in process of construction, for which it had made grants theretofore, which were about to be enlarged.

As between two mere *floats*, in the absence of any specific provision priority in date of grant confers priority in right; the title when located relating to the date of the grant.

Congress might provide a different rule, however, as we hold it did in this case; that any float granted subsequent to the date of the first one and before it should be located, should have priority over it, or more accurately, such subsequent grant excluded from the grant first in date, the lands in question by reason of the descriptive terms of that grant, and indemnity should be given for the quantity thus excluded.

An argument is however drawn from the associate words, and it is said that the use of the qualifying phrase "other-

wise appropriated" makes against our construction. The rule invoked is not an absolute and decisive one. It is only one method of many of ascertaining legislative intention.

The true rule is given by MR. JUSTICE COLERIDGE, in *Rex v. Poor Law Commissioners*, 6 Ad. & E., 7, for construing statutes, which is "to act upon the principle of giving full effect to their language and of declining to mould that language in order to meet every alleged inconvenience or an alleged equity upon doubtful evidence of intention, and that *nothing should withdraw a case from the operation of a statute which is within its words but clear and unambiguous evidence that to do so is to fulfill the* general intent of the statute, and, also, that to adhere to the literal interpretation is to decide inconsistently with other and overruling provisions of the same statute."

In *Woodworth v. State*, 26 Ohio St., 196, 197, the value of this rule or aid to interpretation is thus expressed:

"Now, it must be remarked that the rule of construction referred to can be used only as an aid in ascertaining the legislative intent, and not for the purpose of confining the operation of a statute within limits narrower than those intended by the lawmaker. It affords *a mere suggestion* to the judicial mind that, when it clearly appears that the lawmaker was thinking of a particular class of persons or objects, his words of general description may not have been intended to embrace those not within the class. The suggestion is one of common sense. Other rules of construction are equally potent, especially the *primary* rule, which suggests that the intent of the legislature is to be found in the ordinary words of the statute."

An unlocated *float* is always known and described as a grant.

The phrase "whenever on the line thereof the United States have *full* title," is followed by the words, "not reserved, sold, *granted* or otherwise appropriated, and free from pre-emption *or other claims or rights*," by way of exposition or explanation of the first phrase; and this suggests another rule, namely, that each of these words has a sep-

arate and independent meaning, not included in the more general one of "full title," or in either of the others, but was used in its general sense to accomplish some special purpose, and is to be taken in such general sense, notwithstanding its connection with the more general one. This rule is explained in Endlich on Statutes, §§ 409, 410. *Shillito v. Thompson*, 12 Q. B. Div., 12; *Reg. v. Edmundson*, 2 Ellis & Ellis, 75; *State v. Williams*, 2 Strob., 474. And this rule answers the suggestion that a railroad *grant* is analogous to a *sale*.

The lands embraced within the specific boundaries had been placed *sub judice* by the prior filing of our plat, and were in that sense appropriated, so the language, "or otherwise disposed of," would be clearly applicable and descriptive of the lands claimed by the St. Paul & Pacific Company. The answer to the reasoning that a legislative *grant* is analogous to a *sale* does not meet the necessities of the case. The words "lands sold" are also embraced in the limitation immediately before the word "granted." This construction makes the language so deliberately and carefully used, grossly tautological. The meaning of the phrase "otherwise disposed of" seems quite clear, following as it does nearly all the enumerated methods of disposing of the public lands; and while in the case of 97 U. S., 497, the use of the phrase "otherwise disposed of" was not held sufficient to except any portion of the granted lands for the purpose of aiding in the construction of other roads, it seems illogical and unsound to assume that the court would have so decided had language of such clear and unmistakable import been used as in the present case. Lands *granted* by the United States to other parties prior to the definite location of the line of route are not lands *granted to the Northern Pacific Company*. Nothing can be plainer from the language used.

The object of all rules of construction is to ascertain the intention of the legislature. And it being unreasonable to impute to the legislature inconsistent intents upon the same general subject-matter, what it is clearly said in one part must be the best evidence of what it intended to say in the other. And if the clear language be in accordance with the plain policy and purview of the whole statute, there is the strongest reason for believing that the interpretation of a particular part inconsistently with that is a wrong interpretation. Broom's Legal Maxims, *522. The word "granted," wherever used in section 3, obviously is used in the same sense and meaning, and it is used as signifying a *float* and a subsequent *grant* of a float, that is to have priority of a previous one by reason of the fact that the other has not been located; and it is intended that subsequent floats may be granted out of the same to have priority over it.

The word "granted" as applied to lands in the granting clause has the same significance that it has in the indemnity clause. Indemnity for lands *granted* means indemnity for lands taken out of the first float by the grant of one subsequent; lands that have been *granted* to another so as to entitle the grantee, the Northern Pacific Company, to compensation therefor, and it is used in the same sense in the proviso in the third section "that if said route *shall be found* upon the line of any other railroad route to aid in the construction of which lands have been heretofore *granted* by the United States, as far as the routes are upon the same *general line* the amount of land heretofore *granted* shall be deducted from the amount *granted* by this act. The phrase "routes are upon the same general line" in this connection means the routes that may thereafter be located. This means simply that the prior grant in *that case* shall prevail, but *without indemnity* to the Northern Pacific Company, the lands so taken up by such prior grant being *deducted*

without compensation therefor. This shows that in this connection congress had in thought the question merely of *indemnity by reason of prior grants.* It does not have any tendency to qualify the previous language or to exclude the conclusion that congress in the granting clause had in mind *subsequent* grants. And it was provided that the Northern Pacific Company might consolidate with the company having such *prior* grant. The reference to prior grants was not for the purpose of *adjusting a conflict* with them, as seems to have been supposed by the court in its question: "If further special provision for conflict with other land grants was intended, would not such intention have been made manifest by further proviso or at least by language of unmistakable import?" It was to deprive it of *indemnity to that extent*, which under the general language of the indemnity clause, and the granting clause which preceded it, it would otherwise be entitled to, and also to enable it to take such lands by consolidating with such other company. The reservation or limitation on which we rely is not one making provisions *for conflict with other grants.* It is a provision by which subsequent grants are reserved out of a previously unlocated float. Properly read and applied, there can be no conflict.

The construction and effect we have given to the complainant's grant is not only in harmony with the language used and the subject-matter to which it was applied and purpose intended, but it is the construction and effect insisted on by the complainant and conceded by congress in the joint resolution of May 30, 1870 (16 U. S., 378), and the act of March 3, 1871, as to the locality of the line of the original grant, under the act of March 3, 1865, and the "Shepard Survey," both of which acts of 1870 and 1871 were passed at the instance of the complainant as it is shown, and the location of the line under the act of 1871

was in fact made by it, and it did its utmost and with success to get it approved and to have it maintained.

In 1869, or early in 1870, the Northern Pacific owned three-fifths of the stock of the St. Paul & Pacific Company, and got the rest in the fall of that year. O. Rec., 826. Negotiations for its purchase began in the fall of 1869.

The Northern Pacific Company, beyond doubt, understood the situation of the respective enterprises, and all about the Shepard line from Crow Wing westward, when the joint resolution of May 31, 1870, was introduced and passed, at its instance, beyond doubt, by congress. From the date of the original grant to complainant of July 2, 1864, to May 31, 1870, the only lands *granted* by congress within the range of its probable land limits had been granted by the act of March 3, 1865, for the benefit of the St. Paul & Pacific Co. and some small grants for wagon roads in Oregon had been made, but *they were all floats* and thereafter to be located, as nearly every grant by congress must be; as they are in the first instance mere *floats* to be thereafter attached to the land by location.

The complainant, with knowledge of these facts, in May, 1870, asked of congress and obtained additional belts for indemnity as follows:

"In the event of there not being in any state or territory in which said main line or branch may be located, *at the time of the final location thereof*, the amount of lands per mile granted by congress to said company within the limits prescribed by its charter, the said company shall be entitled, under the direction of the secretary of the interior, to receive so many sections of land belonging to the United States in *such state* or territory within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral lands *and other lands as excepted in* the charter

of said company of 1864, *to the amount of the lands that have been granted*, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of *subsequent* to the passage of the act of July 2, 1864."

This indemnity provision was to operate as to all such dispositions until "the time of the *final* location" of its road. When this joint resolution was introduced and passed in its interest, the complainant had really done nothing at all. It had not even filed a line of general location of its route, and congress with knowledge, presumptively at least, of this fact, and knowing of the subsequent act of 1865, passed this joint resolution. Beyond doubt this indemnity was sought on account of the enlargement or increase of the grant of March 3, 1857, by the act of March 3, 1865, as well as on account of other dispositions under the provisions of the general land laws, and the very first item of indemnity sought, is for *lands granted*, after the date of the act of July 2, 1864, when it was a fact well known that such grants so made were then *unlocated floats*.

In this joint resolution the same language is used as in the act of July 2, 1864, and additional indemnity was sought and granted for *lands granted* after the act of 1864, and before definite or final location of the line, showing clearly the meaning of the language on which we rely, and its great importance and vital significance. "Granted" is clearly not equivalent to "sold" or otherwise disposed of in this legislation — the first case in which such a limitation or exception occurs in a land grant. It was afterwards used in a similar way in the grant to the Southern Pacific Company March 3, 1871 (16 U. S. Stat., 579); in the grant of July 13, 1866, for the Placerville & Sacramento Valley Railroad Company (2 Lester, 173); in the grant of July 25, 1866 (2 Lester, 188); in the grant of July 27, 1866 (2 Lester, 197); and in the grant of March 2, 1867 (2 Lester, 210).

After having secured indemnity for such *subsequent grants* as above provided, the complainant makes and files a location of its general route and subsequently an amended one, and now it stands before the court claiming that the statutory withdrawal thereunder if valid, and which withdrew the lands within the specified distance on either side from "sale, entry or pre-emption," operated to *secure to it the very lands*, for the loss of which it claimed and obtained provision for indemnity.

II.

The Defendants' Grant Under the Act of Congress of March 3, 1857, as Increased by the Act of March 3, 1865, and the Construction and Effect Thereof; and of the Joint Resolution of July 12, 1862.

1. The grant of March 3, 1857, was one of several made by the act of that date, designed to aid a system of railroads for the territory of Minnesota, or future state. It was a grant by description and not of definite quantity — a float to be attached to the land and made certain by the definite location of the line.

The only lands excepted from the grant are lands that had been sold, pre-empted or otherwise appropriated and lands *theretofore* reserved to the United States, *i. e.*, before the passage of the act "by any act of congress, or in other manner by competent authority, for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever." And indemnity was granted for any sections or parts of sections so granted or which might be sold, or to which the right of pre-emption might attach be-

fore the line or route of the road was definitely fixed, and also for lands *previously* otherwise appropriated by the United States (act of March 3, 1857, sec. 1); but a *subsequent* general grant for a railroad in the *ordinary* form would not be within such reservation.

When the route of the road is definitely fixed:

"The grant then becomes certain, and by *relation* has the same effect upon the selected parcels as if it had specifically described them."

Schulenberg v. Harriman, 21 Wall., 60.
Railroad Co. v. United States, 92 U. S., 741.

"The grant takes effect upon the sections by relation as of the date of the act of congress. In that sense we say that the grant is one *in presenti*. It cuts off all claims, *other than those mentioned*, to any portion of the lands *from the date of the act*, and passes the title as fully as though the lands had been capable of identification."

Van Wyck v. Knevals, 106 U. S., 365.
Railway Co. v. Alling, 99 U. S., 475.
Mo., Kan. & Texas R'y Co. v. Kansas Pac. R'y Co., 97 U. S., 498.

The branch road in question was to extend "*via* St. Cloud and Crow Wing to the navigable waters of the Red River of the North, *at such point as the legislature of the territory might determine*," and the legislature fixed this point at St. Vincent in the international boundary. O. Rec., 760. The subsequent grant to the Northern Pacific *necessarily* must cross and overlap this grant. This branch line was located as far north as Crow Wing November 12, 1857 (St., fol. 30), and we maintain that the odd-numbered sections in dispute within the six-mile limits of the line that had not been sold, and to which no pre-emption rights had attached when the line was definitely fixed; and had not been *reserved* at the date of the act, within the meaning of the last proviso of section 2

of the act of 1857, "by any act of congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement, or for any other purpose whatever," passed to the territory of Minnesota.

The title to the alternate odd-numbered sections within six miles on either side of the line took effect as of the date of the grant, March 3, 1857, "and cut off all *intervening claimants*, except as to such portions as may have been *sold*, or to which *pre-emption rights* may have attached."

Railroad Company v. Barney, 113 U. S., 626.

The reservations in our grant of March 3, 1857, which operated as limitations on the grant,—

"Excluded only specific tracts to which certain interests had *attached* before the grant had become definite, or which had been *specially* withheld from sale for public uses, and tracts having a peculiar character, such as swamp lands or mineral lands, the sale of which was then against the general policy of the government."

Mo., etc., R'y Co. v. Kan. Pac. R'y Co., 97 U. S., 498.

And we confidently submit that in the case of the act of March 3, 1857, as was said of that of July 1, 1862, as amended July 2, 1864: "It was not within its language or purpose to except from its operation any portion of the designated lands for the purpose of aiding in the construction of other roads," and that, while our grant was a *float* congress might have appropriated the lands to any other use or purpose; yet that a subsequent grant which, by its express terms, is *subject and subordinate* to all prior grants, and to all subsequent ones until the definite location of its line of road, as that of the Northern Pacific Company plainly is, will not operate as a prior appropriation of the lands because of mere *priority of location*. But this, even, it did not have.

Priority of grant, and not priority of location, gives priority of right to our company over the claims of the Northern Pacific Company, under its grant made more than seven years after ours.

"The construction thus given to the grant in this case is, of course, applicable to all similar congressional grants, and there is a vast number of them, and it will tend, we think, to prevent controversies between the grantees and those claiming under them respecting the title to the lands covered by their several grants, *and put an end to struggles to encroach upon the rights of others by securing an earlier location.*"

Mo., Kan. & Texas R'y Co. v. Kan. Pac. R'y Co., 97 U. S., 498.

JOINT RESOLUTION OF JULY 12, 1862.

2. It has been contended that by virtue of the Joint Resolution of July 12, 1862 (12 U. S. Stat., 624; St., fols. 34–36), by which that part of the grant by act of March 3, 1857, extending northerly from the intersection of the tenth standard parallel with the fourth guide meridian was vacated, and in lieu thereof the alternate sections within six miles of such new branch line of route as the authorities of the state might designate, having its southwestern terminus at any point on the existing line between the *Falls of St. Anthony and Crow Wing*, and extending in a northeasterly direction to the waters of Lake Superior with a right of indemnity within the fifteen-mile limits thereof, and which resolution was accepted by the state authorities; that the point of intersection thus named became a *point through which* the St. Paul & Pacific Company was obliged to build its branch road on the way to St. Vincent. This point is at the northwest corner of town one hundred and forty, range thirty-two. It, however, is a fact that, notwithstanding the vacation of the part of the grant north of said point of

intersection, yet the grant under which the defendants claim *has always existed over and across the entire land limits of the grant made to the complainant.* But at the time the Northern Pacific Company fixed its general route, as well as the line of its definite location, the part of the grant vacated by said joint resolution *had been restored and enlarged by the act of March 3, 1865, to ten seetions per mile*, so that when it came to locate its line of *general* route it was a physical impossibility for it to do so, without crossing the branch line and grant for it, through to St. Vincent. St., fols. 36–47. Up to the time of the restoration of that part of the grant and its enlargement by the act of March 3, 1865, there had been *no location of the branch line north of Crow Wing*, a point about thirty miles south of the point, north of which the grant was so vacated, and no location whatever of the line of general route of the Northern Pacific Company.

The purpose of the Joint Resolution was not to make the alleged point of intersection a point in the line of the construction of the road to St. Vincent or of the adjustment of the grant for it. It was adopted merely as a point of measurement, by which to measure a portion of the grant to be vacated equal to and as a consideration for the additional or new grant, given for the new branch, having its southwestern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior.

3. On the 6th of February, 1864, by the act of that date (Laws of Minnesota, 1864, page 174), the St. Paul & Pacific Company was granted *the right to relocate the lines of its road and branches* so as to run and construct the branch from St. Anthony to the Red River of the North, from some point at or near St. Cloud to any point in the International boundary near the Red River of the North,

and it was not to be required of the company to construct or maintain the said branch road *to or by way of Crow Wing*. Having been exonerated and released from the obligation of constructing its branch road to or by way of Crow Wing, the point to which it had been located in 1857, it is easy to see that no road from Crow Wing northerly or northwesterly to the alleged point of intersection was expected to be built. It was evidently the intention of the legislature to provide for a more direct route from St. Cloud to the Red River of the North at a point in the International boundary. The same act gave the company a right to extend, survey, locate, etc., its road from some point at or above St. Cloud to the westerly end of Lake Superior. Thereafter the point of departure from the Mississippi river to St. Vincent *might be* at St. Cloud *instead* of Crow Wing, and the point of departure from Lake Superior *might be* at or above St. Cloud. This act gave the company the *option* to build the direct line to St. Vincent from *St. Cloud* or to build it *by way of Crow Wing*. It had the *option of relocation*. St., fols. 47–62.

The subsequent act of the legislature of March 2, 1865, which provided, section 2, that "Any and all additional grants of land made prior to the passage of this act, or which may hereafter be made by the congress of the United States to the state of Minnesota for the purpose of aiding in the construction of the lines of railroad, or any portion of them, *authorized to be constructed* by the St. Paul & Pacific Railroad Company, *shall enure to the benefit* of said company, and the present and future interest of the state in or to them are hereby granted and assigned to the said company;" also provided (section 1) for building the St. Vincent branch from St. Cloud "in a northerly direction to St. Vincent on the International boundary within the time limited by law"—by act of congress. St., fols. 93, 94.

4. We submit, with confidence, that the provisions of the

act of March 3, 1865, increasing the grant of March 3, 1857, and providing also:

"That the provisions of this act shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July 12, 1862, entitled, etc., notwithstanding the vacation thereof by said state, *as though said joint resolution had not been passed*," is decisive in our favor.

And section 7 gives a full and complete right of location of the said roads and branches, in so far as they had not been located, which would give to the St. Paul & Pacific Railroad Company a right to locate the branch line or complete the location of it from Crow Wing, beyond which no location had ever been made, or from St. Cloud, to the International boundary at Red River of the North. The words "line" and "grant," north of the point of intersection mentioned, are spoken of in the resolution of July 12, 1862, and in section 9 of the act of March 3, 1865, as synonymous; they are used interchangeably. It is this *grant* that is restored and enlarged, and it is restored to the same condition "as though said joint resolution had not been passed." The joint resolution, therefore, was by the provisions of the act of March 3, 1865, legally obliterated, and stood thereafter, as to the line from Crow Wing to St. Vincent, as though it had never been passed. To give sections 7 and 9 of the act of March 3, 1865, any other construction or operation would make them sheer nonsense when considered with the rest of the provisions of the act, and the act of March 3, 1857, of which it was amendatory.

This act of congress of 1865 must be taken in connection with the state acts of 1864, giving to the St. Paul & Pacific Railroad Company the *option to relocate its branch line* from St. Cloud to St. Vincent, or from Crow Wing to St. Vincent, and the act of 1865. This was the condition of things with reference to which the act of congress of March

3, 1865, was passed, and, so far as the legislation of the state was concerned, the company had the right to locate the line from St. Cloud to St. Vincent, and the legislation of the state was strictly in harmony with the act of congress afterwards passed, March 3, 1871, providing for "a relocation of the line (so as to go from St. Cloud to St. Vincent) in consideration of a relinquishment of land," etc.

These views are sustained in *Nash v. Sullivan*, 29 Minn., 206.

Further as to the Effect of the Act of Congress of March 3, 1865.

This act was passed before any right whatever had attached in favor of the Northern Pacific Railroad Company. It had not made or filed any line of its general route. It did not make and file any line of definite location until more than six years thereafter. The southern terminus of the lines to be built under the grant of March 3, 1857, had been fixed by congress and the northern terminus of the branch to St. Vincent by the legislature of Minnesota in 1857, which was to be at a point in the international boundary near the Red River of the North. This had all been done before the grant was made to the Northern Pacific Company. The limits within which the act of congress required the Northern Pacific Road to be located through Minnesota were such that it must of necessity cross the line of this prior grant; and it took its rights, whatever they were, under its grant subject not only to the grant of 1857 but to that of 1865; and the line when located under these grants related back as against the claims of the Northern Pacific Company to their date, and antedated its pretensions within what it was evident must become conflicting and overlapping limits of the several grants.

1. The act of March 3, 1865, is an amendment to that of March 3, 1857, as construed in *Barney v. Winona & St. Peter R'y Co.*, 117 U. S., 228, 230, 231, 232.

"The grant of the four additional sections by the act of 1865 was also a grant of land in place. The intention of congress was to enlarge the first grant from six to ten sections per mile, the additional four to be take in like manner as the original six, and subject to the same limitations, and to others that had been or might be prescribed, with a right to select, etc., indemnity lands within *twenty* miles instead of *fifteen*. The act did not purport to change the character of the first grant but to increase its quantity."

The result is substantially the same as if the act of March 3, 1857, had been altered by increasing the word "six" sections per mile so as to read "ten" sections per mile as to place limits, and the word "fifteen" to "twenty" in respect to indemnity. This is clearly what congress intended to accomplish when the grant of the Northern Pacific Company is taken and considered in connection with the act of March 3, 1865. The grant to the Northern Pacific Company having excluded from its operation, and it not in any way whatever affecting lands, which at the date of the definite location of its line had been reserved, sold, *granted* or otherwise appropriated and not free from pre-emption or other claims or rights, it is evident that congress intended to increase the grant by the act of 1865 as to the four sections and put them on the same basis as the previous six, from the fact that the *termini* of the lines had been definitely fixed and every section or part of section was within the descriptive terms of the grant of March 3, 1857, as increased by the act of March 3, 1865. It was evident and unavoidable that there was to be an overlap, and no right whatever, either present or prospective, *having attached* in favor of the Northern Pacific Company to lands which would fall within the overlap, the act of March 3, 1865, being

without exception or limitation as to them and it describing them, necessarily became the prior grant; *and this is so whether the act of 1865 relates back to the act of March 3, 1857, or not;* for, if the increase of grant under the act of March 3, 1865, dates *only from that time*, it is still a grant paramount to that of the Northern Pacific Company, and when the Northern Pacific Company came to make its line of definite location in 1871, it was clear that at the junction of these lines where the grants must necessarily overlap, the alternate sections within ten miles on either side of the branch line of the St. Paul & Pacific Road were lands that had been not only *granted*, but *otherwise appropriated*, so that the line of definite location of the Northern Pacific Company could not affect them; but when the branch line of the St. Paul & Pacific Company from St. Cloud to St. Vincent was definitely located, this location related back to the date of the first act, or the date of the several acts under which it was made, and so antedated the title of the Northern Pacific Company. And this result it could not avoid under its grant, we submit, even by obtaining an earlier location.

Missouri, Kansas & Texas R'y Co. v. Kansas Pacific R'y Co., 97 U. S., 498.

We submit that it was within the language, plan and purpose of the act of July 2, 1864, to except from its operation all lands within the place limits of the branch line from St. Cloud to St. Vincent, wherever it should cross, as it certainly would have to cross, the line of the Northern Pacific, in order to reach St. Vincent. It is true that while our grant was a *float*, and before location, congress might have appropriated the lands to any other use or purpose; but a grant which by its express terms is subject and subordinate to all grants made prior to its definite location of line, as that of the Northern Pacific plainly is, will not operate as a

prior appropriation of the lands, because of priority of date of the act, or by reason of priority of definite location of its line.

Kansas Pacific Railroad Company v. Dunmeyer, 113 U. S., 640.

When our branch line became definitely located, it then became evident what odd-numbered sections on either side of it had been granted for its benefit, and within the place limits, when definitely fixed, of the line of the Northern Pacific Road where the lines intersect each other, and thus it would become at once apparent what sections and parts of sections had been previously granted to the state of Minnesota, in like manner as if they had been described in the granting act itself, and it would then appear that these sections thus granted were *not within the descriptive terms* of the grant to the Northern Pacific Company, and were within the descriptive terms of the grant to the state of Minnesota for the St. Paul & Pacific Railroad Company.

The important significance and near relation of state legislation to congressional, concerning the enterprise of the St. Paul & Pacific Railroad Company, is well illustrated by the act of the legislature of Minnesota of March 2, 1865, anticipating the extension of the grant by act of March 3, 1865. It is shown that these bills were proceeding in congress and in the state legislature *pari passu*.

The state act of March 2, 1865, provided that:

"Any and all additional grants of land made prior to the passage of this act, *or which may hereafter be made* by the congress of the United States to the state of Minnesota, for the purpose of aiding in the construction of the lines of railroad or any portion of them authorized to be constructed by the St. Paul & Pacific Company, shall enure to the benefit of said company," etc. St., fols. 91, 94, 95.

The state acts of February 6, 1864, and March 2, 1865, are acts *in pari materia* with the acts of congress March 3, 1865, and March 3, 1871.

Railroad Co. v. Attorney-General, 118 U. S., 682, 689, 690, 691.

It was clearly within the intention of congress, by the limitation contained in section 3, and it was its policy, to make any subsequent grant to the state in aid of its system of roads it chose, which should not be subject or subordinate to a grant which was *a mere float* and had not attached to any particular lands, to a company of private adventurers, which was to extend in its limits over a belt of eighty miles in width across the entire state, and crossing in its location, when made, in all probability, the grants for four roads of *the state system*, three of which were then in process of construction. Such *subsequent* grant was not in law any part of such *float*. It is to be borne in mind that when the act of March 3, 1865, was passed, no attempt had been made on the part of the Northern Pacific Company whatever to make either a *general* or definite location of the route of its road. It is, therefore, not possible, we submit, to maintain that any lands were in any way or manner *reserved* for that company by the act under which it claims, as against a subsequent grant to the state for railroad purposes prior to definite location of its line, when every method by which the United States could, according to the terminology of land laws and methods for the disposition of the public domain, grant or dispose of lands, was stipulated and intended to be, and was kept in full operation and effect, until the line of its route should be definitely fixed and a plat thereof filed, except as to *sale, entry or pre-emption*, and as to those methods, until its *general* route had been fixed and a plat thereof filed.

And this view is sustained by the subsequent provisions of the Joint Resolution of May 31, 1870, providing that:

"In the event of there not being in any state or territory in which said main line or branch may be located, *at the time of the final location thereof*, the amount of lands per mile granted by congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the secretary of the interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such state or territory within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of 1864, to the amount of the lands that have been *granted*, sold, reserved, occupied by homestead settlers, pre-empted *or otherwise disposed of subsequent to the passage of the act of July 2, 1864.*"

The Alleged Reservations in the Acts of March 3, 1857, and March 3, 1865.

The limitation in section 3 of the act of 1865, extending the act of 1857, does not except out of the operation of these acts any lands for the Northern Pacific Company. The provision in the act of 1865 is as follows:

"That any and all lands *heretofore* reserved to the United States by any act of congress, or in any manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as may be found necessary to locate the route of said road through such *reserved lands*, in which case the right of way shall be granted, subject to the approval of the president of the United States. Provided, further, that any lands which may have been granted to the territory or state of Minnesota for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension of said grants,

shall be *deducted* from the full quantity of lands hereby granted."

Deductions were to be made of lands that had been *granted* to the territory or state of Minnesota for railroad purposes, but not of lands granted to the Northern Pacific Railway Company. No reservation was made or to be made of any of these lands prior to the definite location of complainant's line, except upon filing the map of *general* route, and then only from *sale*, *entry* or *pre-emption*, and this did not prevent them from being taken or disposed of by *grant* for the benefit of any other railroad company, or for any other public use.

Kansas Pac. R'y Co. v. Dunmeyer, 113 U. S., 637.

The reservation in section 1 of the act of March 3, 1857, is not as extensive as that in the act of March 3, 1865.

The act of congress of July 2, 1864, does not *per se* operate as a reservation of any lands whatever for the complainant. It simply provides how and when reservations may be made; the power of the United States remaining in full force, in the meantime, to make any conceivable disposition of all lands that might thereafter be found within the limits of complainant's grant when definitely located. The term *reservation* implies that some reasonable degree of certainty has been in some way imparted to the lands upon which it is to operate; lands reserved are excepted, but how can an exception be maintained thus utterly uncertain and indefinite? This view is sustained by *Mo., Kan. & Tex. R'y Co. v. Kan. Pac. R'y Co.*, 97 U. S., 498, where it is said that "the grant was made in the nature of *a float*, and the *reservations* excluded only *specific* tracts to which certain interests had attached before the grant had become definite, or which had been *specially withheld* from sale for public uses, and tracts of a *peculiar character*."

But for the words of limitation in the grant to the Northern Pacific Company, referred to, as to lands within its place limits, the doctrine of relation would protect its rights fully. But in the case of this grant it was not intended that *priority of date of grant* should have any such effect, or that the *doctrine of relation* should apply to it. The rights of the Northern Pacific Company as to intervening or subsequent claimants dates only *from filing the map of definite location* of the route of its road. No claim of any kind originating prior to that date could be overreached by its grant, except as to *sales, entries* or *pre-emptions* after the filing of the map of *general* route.

Again, the provision excepting lands *previously granted* to the territory or state for railroad purposes from the operation of the act of 1865, *within the limits of the extension thereof*, and requiring such lands to be "deducted from the full quantity of lands hereby granted," shows that no exception was to be made in favor of the complainant's grant with its limitations, and the familiar rule *expressio unius est exclusio alterius* applies.

The word "granted" in the clause of grant to the Northern Pacific Railroad Company: "Not reserved, sold, *granted*," etc.; and in the indemnity clause where the insertion of the word *granted* was the subject of a separate amendment, has evidently the same meaning as in the *proviso* which follows: "Provided that if said route *shall be found* upon the line of any other railroad route, to aid in the construction of which lands have been heretofore *granted* by the United States, as far as the routes are upon the same general line, *the amount of land heretofore granted* shall be *deducted* from *the amount granted by this act*."

Lands thus circumstanced and *theretofore* granted were to be deducted from the grant made by the act, and *without* indemnity therefor, while as to lands granted *thereafter* and

before the line of road should be definitely fixed, the company could have indemnity.

When the act of March 3, 1865, was passed there had been no reservation or appropriation of the lands in controversy by the United States for any other purpose, and we are unable to understand how lands can be said to have been reserved or appropriated to any other purpose when the power of the government to *grant*, *reserve* or *appropriate them to any purpose it saw fit*, not only continued, but *it was stipulated* that it should continue until the line of definite route of the Northern Pacific Company should be filed in the office of the commissioner of the general land office.

There had been no *appropriation* of the lands in question to the use or benefit of the Northern Pacific Company before the passage of the act of March 3, 1865.

There had been no *reservation* in any form of any of these lands to or for the Northern Pacific Company, upon any condition or contingency, or the United States, so as to prevent the acts of March 3, 1857, or of March 3, 1865, operating upon them in the fullest possible extent.

These lands cannot be said to have been *reserved* for the Northern Pacific Company, when its grant shows that in any event they were to be excluded from its operation, because owing to the limitations of its grant they were not within its descriptive terms of the subject matter upon which the grant was to operate.

When the line of the branch from St. Anthony *via* St. Cloud and Crow Wing, *i. e.*, the St. Vincent branch of the St. Paul & Pacific Railroad Company, became definitely located, and the grant under the acts of March 3, 1857, and March 3, 1865, acquired precision and certainty, the title of the state of Minnesota, in trust for the Railroad Company, became perfect and related back to the dates of said several acts, at and before which no right whatever had attached

to them on the part of the Northern Pacific Company. Thus far, at least, it is plain that the title of the St. Paul & Pacific Railroad, and those claiming under it, is the superior and paramount title.

III.

The Effect of Subsequent Legislation, State and Congressional, on the Rights of the Parties — The Locations of their Respective Lines — Withdrawal along the General Route of Complainant, and Operation and Effect of the Act of March 3, 1871.

Recurring to the history of what occurred in relation to the enterprises of the St. Paul & Pacific Railroad Company in relation to its main line from St. Paul to Breckenridge, and its branch line from St. Anthony *via* St. Cloud and Crow Wing to St. Vincent (called the St. Vincent branch), we find that the latter branch was located in 1857 only to Crow Wing, a point about eight miles south of Brainerd on the line of the Northern Pacific Company as subsequently located. This point is about fifty-two miles south of the point at the intersection of the tenth standard parallel with the fourth guide meridian, mentioned in the joint resolution of congress of July 12, 1862. See Statement, fols. 34–40. The grant for the new branch to the waters of Lake Superior "having its southern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing," with right of indemnity for fifteen miles on each side of the line, was conferred on the St. Paul & Pacific Railroad Company by act of March 6, 1863, and it was authorized to "survey, locate, build and operate the branch so provided for, but upon the express condition that the lands should in

no wise enure to the line of road already located or constructed, or to be located or constructed thereafter, under the powers of the present act of incorporation of the St. Paul & Pacific Railroad Company, and that the lands should not be incumbered for any purpose connected with the said line or lines provided for by the existing charter." St., fols. 43–46. Further, that if it failed to construct the road in time, "all the rights, franchises, lands, property, interests and immunities hereby granted pertaining to the unfinished portion of said *new* branch road should be forfeited to the state, and shall not enure in any way to the St. Paul & Pacific Railroad Company, but should be forfeited and retained by the state of Minnesota for future disposition." But the act of February 6, 1864, providing for relocation of lines, applied to this branch as well as to all others. St., fols. 42–50. And it was under the provisions of this act allowing such relocation of the lines and branches of the St. Paul & Pacific Railroad Company that the new corporation called the First Division of the St. Paul & Pacific Railroad Company was incorporated and became the owner of the main line from St. Paul *via* Minneapolis to Breckenridge, and of that part of the St. Vincent branch line between St. Anthony by way of St. Cloud and Wautab, a point about seven miles north of St. Cloud. St., fols. 51, 52. The enterprise of the St. Vincent branch lay dormant until 1869, when a survey and location from Crow Wing, called the Shepard line, was made and filed, which passed in a northeasterly direction, north of Rush or Otter Tail lake, and then along in the valley of Red River of the North towards St. Vincent as far as Wild Rice river to town 142, range 40, being as far north as the public surveys had extended. In the meantime, March 2, 1867 (St., fol. 142), the legislature passed an act providing:

"If twenty miles of said road extending from Lake Superior to a point at or above St. Cloud shall not have been

put in operation with the cars running thereon by the second day of March, 1870, the lands *appertaining thereto* should revert and be passed over to the Minneapolis & St. Cloud Railroad Company."

And providing further:

"That this railroad shall not have the power to consolidate with any other railroad company within this state."

By an act of March 7, 1870 (St., fols. 144, 146), reciting the last named provision of the act of 1867, and the failure of the company to comply therewith, it was enacted by the legislature:

"That the lands appertaining to the said road, *extending from Lake Superior to a point at or above St. Cloud*, by reason of any grant made by the congress of the United States, or of any law of this state, or both, are hereby declared to be forfeited and lost to the St. Paul & Pacific Railroad Company, and the said lands are hereby granted to the said Minneapolis & St. Cloud Railroad Company to aid in the construction of their branch road under the provisions of the charter of said last named company."

This did not in the slightest degree affect the grant for the branch line from St. Anthony by way of St. Cloud and Crow Wing to St. Vincent.

The Effect of the Shepard Line Located in 1869 from Crow Wing Westward, Etc.

Referring to the preceding statement, it appears that after the option was secured to the St. Paul & Pacific Railroad Company, by the legislation aforesaid, either to locate its line of road from Crow Wing to St. Vincent, or from St. Cloud to St. Vincent, and some time in the year 1869, a survey and location was made of a line extending from Crow Wing in a northwesterly direction as far as town 142, range 40, passing in the vicinity of Rush or Otter Tail lake, that point being as far north as the public surveys had extended. This

is called the "Shepard" line, and is marked on several of the plats in evidence; and on the 13th of October, 1869, this survey was adopted by the company. A map of this survey and location was filed in the office of the governor of the state October 20, 1869, and a certified copy was forwarded by the governor to the secretary of the interior November 1, 1869. Thereupon a question ensued as to the propriety of this location, and objections having been made to it by the secretary of the interior, time was given to furnish proof to show the reason for deviating so far to the westward. Proofs were furnished which were deemed inadequate, and time was extended from June 9, 1870, for ninety days, and ultimately until November 20, 1870. The map of location, however, was filed in the office of the commissioner of the general land office, as appears from the complainant's Exhibit 7, P. Rec., 228. While the question was pending in relation to this survey and location before the department of the interior, the Northern Pacific Company acquired complete control of the St. Paul & Pacific Railroad Company, by the purchase of its capital stock and also of the capital stock of the First Division of the St. Paul & Pacific Railroad Company. See St., fols. 117–132.

At this time the St. Paul & Pacific Railroad Company had a right under the joint resolution of July 12, 1862, and the act of March 3, 1865, and the state legislation of Minnesota of 1864 hereinbefore referred to, to locate a line from St. Cloud to Lake Superior which would overlap to a very large extent the locality of the grant to the Northern Pacific Railroad Company from Brainerd eastward to Lake Superior. It had also the right to locate its line *at its option*, the St. Vincent branch, either from Crow Wing *or* from St. Cloud to St. Vincent on the international boundary on the waters of the Red River of the North. It had pending

before the department a location from Crow Wing in that direction following the line of the old trail from St. Paul to the Selkirk settlement or Red River of the North. And the question was whether that location should be approved. At the same time there was pending before congress a bill which had passed the senate for a grant from Breckenridge, the western terminus of the First Division of the St. Paul & Pacific Railroad Company, on the west side of the Red River of the North, to the international boundary. The latter scheme was in the interest of the First Division of the St. Paul & Pacific Company and was extremely unfavorable to the interest of the Northern Pacific Company, unless it could control it.

It acquired such control as already stated. Under the other location from Crow Wing by way of Rush or Otter Tail lake, the line of the road thus located would be substantially on the same line as that of the Northern Pacific Company, and for a very considerable distance overlapping it, and being found upon the line of the route of the Northern Pacific Company, the amount of land granted for the St. Paul & Pacific Company would be deducted from the amount granted by the act of July 2, 1864, to the Northern Pacific Company by the proviso to the third section of that act. It was absolutely necessary on the part of the Northern Pacific Company in this juncture of affairs to defeat the scheme for a grant from Breckenridge to the international boundary on the west side of the Red River of the North, and also to secure such legislation as would disencumber the line of the Northern Pacific Railroad Company from Lake Superior westward from the previous rights of the St. Paul & Pacific Company under the act of March 3, 1857, and the joint resolution of July 12, 1862, and the subsequent act of March 3, 1865, and to get such legislation as would locate the rights they had thus acquired

in *a new field*, and to *release* as far as possible the section of country through which the Northern Pacific Railroad was to pass *from such prior rights*. Under these circumstances, and in pursuance of the policy thus dictated by the existing condition of affairs, the act of March 3, 1871, was passed *at the procurement* of the Northern Pacific Company for these purposes. In support of this statement see St., fols. 117–139.

The bill which had passed the senate for the grant to the First Division of the St. Paul & Pacific Railroad Company, which had been sent to the house for its concurrence at the third session of the forty-first congress, was on the 2d day of March, 1871, converted by an amendment into "An act authorizing the St. Paul & Pacific Railroad Company to *change its line* in consideration of a relinquishment of lands." St., fols. 91–97. The bill pending in congress, as thus amended, passed, and on the following day it was approved by the president. 16 U. S. Stat., 588. We here quote it again:

"An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of land. Be it enacted, etc., That the St. Paul & Pacific Railroad Company may so alter *its branch lines* that instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior, it may locate and construct *in lieu thereof* a line from Crow Wing to Brainerd *to intersect with the Northern Pacific Company*, and from St. Cloud *to a point of intersection with the line of the original grant* at or near Otter Tail or Rush lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines *as is provided for the present lines by existing laws;* provided, however, that *this change shall in no manner enlarge said grant*, and that this act shall only take effect upon condition of being in accord with the legislation of the state of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands *along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to*

Lake Superior, and that upon the execution of said release such lands so released shall be considered *as immediately restored to market without further legislation.*"

Construction and Effect of the Act of Congress, March 3, 1871.

1. We have already shown, as we think, that after the passage of the act of March 3, 1865, the point of intersection under the provisions of the joint resolution of July 12, 1862, of the tenth standard parallel with the fourth guide meridian ceased to be, if it ever was, a point through which the branch road to St. Vincent was to pass. We now submit, with confidence, that the act of March 3, 1871, above quoted, authorizing the St. Paul & Pacific Company to change its line in consideration of a relinquishment of land, must be construed as an act to authorize the *change of the location of its existing land grant to a new line.* The word "grant" and the word "line" in this case, as heretofore noticed, are used in the same sense or signification. Congress has nothing to do whatever with the location of the line of a railroad within a state. That iss a matter to be regulated by state authority. The act of March 3, 1871, in its conditions provided that that act should take effect only upon condition of being in accord with the legislation of the state of Minnesota, is in pursuance of this policy. The St. Paul & Pacific Company was authorized to so alter its branch lines that instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it might locate and construct, *in lieu thereof*, a line from Crow Wing to Brainerd, *to intersect with the Northern Pacific Company*, and *from St. Cloud to a point of intersection with the line of the original grant* at or near Otter Tail or Rush Lake, etc.

The grant had already been increased, as we have seen, to a grant in place, of ten alternate odd-numbered sections on each side of the line of the road and branches. It was to have the same proportional grant of land, to be taken in the same manner along said altered lines as is provided for the present lines by existing laws. This means clearly that it was to have every alternate odd-numbered section on each side of the new lines so far as they were altered or new, for ten sections in width, as provided for the other lines by existing laws. This carried also the right of indemnity under existing laws.

This is not a new grant; it is a provision for the relocation of an existing one, for an exchange of the rights acquired under the existing grant to a new line. Its purpose was to accomplish an exchange of lands along existing lines in which the Northern Pacific Company was so largely interested, and as to which the St. Paul & Pacific Company had an undoubted priority, to the new lines. It was intended in order to carry out that purpose, to legalize and to change in part, the "Shepard line" of survey and location which was under consideration by the department of the interior. No other possible construction can give any effect to the provision in the act of March 3, 1871, "and from St. Cloud *to a point of intersection with the line of the original grant* at or near Otter Tail or Rush Lake." There is no ground for any pretense whatever that the original grant lay in that direction, other than it had been so located by the "Shepard" survey under the legislation to which we have already called attention.

The act of March 3, 1871, was intended to legalize that line and to authorize the southern portion of it to be swung southwardly from Crow Wing down to St. Cloud, "so as to form a more direct route to St. Vincent." No sensible effect whatever can be given to this act that does not include this

clearly expressed intention. And this intention is to be arrived at in conformity with principles of construction and interpretation which have already received the sanction of this court. We refer to principles laid down in *Platt v. Union Pac. Co.*, 99 U. S., 48, 64; *Railroad Co. v. Alling*, 99 U. S., 473, 474; and we insist that the history of the legislation of congress and of the state of Minnesota in relation to this enterprise is to be taken and considered as in *pari materia*.

Kansas City, etc., R. R. Co. v. Attorney General, 118 U. S., 682, 689, 690, 691.

While it is clear that this was not a *new* grant but a provision for an exchange of lands and for a release along the abandoned lines, so far as they were abandoned, of the rights of the St. Paul & Pacific Company for a transfer of the same to the new lines, it is plain that it was *a mere exchange of lands* that was contemplated, and it was left optional with the St. Paul & Pacific Company whether to elect to accept the provisions extended by the act of March 3, 1871, and abandon *pro tanto* its rights under existing lines.

If this view of the effect of the act of March 3, 1871, that it is not a *new* grant, but an act for a relocation of the former grant, on the conditions therein contained, is correct, there can be no question but the bill in this cause must be dismissed and a decree entered for the defendants.

The branch line from St. Anthony *via* St. Cloud and Crow Wing was never located beyond Crow Wing. The grant as to the part of it vacated under the Joint Resolution of July 12, 1862, was restored March 3, 1865, in like manner "*as though said joint resolution had not passed*," and the grant was increased throughout. Act of March 3, 1865, sec. 7.

The state had a right to have the location of this branch

line completed according to law, and so have the benefits of the acts of March 3, 1857, and March 3, 1865, which were paramount and prior to the pretensions of the Northern Pacific Company. It had provided by the act of February 6, 1864, section 6 (*ante*, fol. 48), that:

"The St. Paul & Pacific Railroad Company shall have the *right to relocate the lines* of its road and branches so as to run and construct . . . the branch from St. Anthony to the Red River of the North, from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, *and it shall not be required of the said company to construct or maintain the said branch road to or by the way of Crow Wing.*"

By the act of March 2, 1865, section 1, provision was made for constructing this branch "in a northerly direction to St. Vincent on the international boundary line within the time limited by law," *i. e.*, by act of congress of March 3, 1865, and this act of congress contemplated a location of this branch line. See sec. 6. No complete location had then been made.

If the St. Paul & Pacific Company was "not to be required to construct or maintain the said branch road *to* or by the way of Crow Wing, upon what ground is it to be maintained, so far as state authority is concerned, that it was bound to build it through Crow Wing to the famous point of intersection amidst the bogs, swamps and uninhabitable region in which this point is situated? The wants, wishes and will of the state had been clearly expressed. What more was needed? Simply the consent of congress to the location that had received the sanction of the state legislature, and this the state and its representatives in congress obtained by the act of March 3, 1871.

The Northern Pacific Company had begun to show some signs of vitality. Its road was to go from Brainerd, eight

miles north of Crow Wing, to the waters of Lake Superior. There was no longer any need for the new branch provided for by the joint resolution of July 12, 1862, "having its southwestern terminus at any point on the *existing* line between the Falls of St. Anthony and Crow Wing, and in a northeasterly direction to the waters of Lake Superior." There was no occasion for building this branch. The railroad policy of the state had changed. The completion of the road from Crow Wing to Brainerd was all that was needed and it was to take the place of this branch, and commerce would pass over the Northern Pacific line from thence to the lake.

The entire plan and purpose of the act of March 3, 1871, was to apply the existing grant so as to carry out this altered policy under the acts of March 3, 1857, and March 3, 1865. This is what the legislature and people of Minnesota wanted and what its representatives in congress sought to do. It was not their plan or purpose, or the intention of congress, that they should release or abandon their rights, but that they should release lands along the abandoned lines, *i. e.*, so far as lines were abandoned, and take and have the same rights along the new line.

The theory of the complainant seems to be that the St. Paul & Pacific Company, in consideration of the consent of the United States to a relocation of its line, which, as a mere relocation or change of the line of a railroad, was wholly a matter of state concern, was to release absolutely its existing rights in the overlap, and get nothing in the new region, where it would be met with the withdrawal under the sixth section of the grant to the Northern Pacific Company; of October 12, 1870; that the state, asking for the privilege of utilizing the aid already granted, should lose absolutely all it had — that asking for bread it should receive a stone, and the act of March 3, 1871, be construed not so as to conserve

its existing rights but deprive it of them, and this *deprivation* to be the consideration for the "relinquishment of lands," etc., required by the act as a condition of executing the policy of the state.

The principle upon which this court acted in *Railroad Company v. The Attorney General*, 118 U. S., 682, 690–693, forbids such a result. All this legislation, state and congressional, is *in pari materia*, with a view of applying to the use intended the rights granted the state under the acts of March 3, 1857, and March 3, 1865.

Now mark how the act of 1871 follows the policy of state legislation as to the branch to St. Vincent, having provided, as already suggested, for a connection from Brainerd to the waters of Lake Superior which made the branch line in that direction unnecessary.

The act is entitled "An act authorizing the St. Paul & Pacific Railroad Company to change its line *in consideration* of a relinquishment of land."

"Instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior it may locate and construct in lieu thereof (1) a line from Crow Wing (the end of the old location) to Brainerd, to intersect with the Northern Pacific Railroad, and (2) from St. Cloud to *a point of intersection with the original grant*, at or near Otter Tail or Rush lake, so as to form a more direct route to St. Vincent with the same proportional grant of lands to be taken in the same manner along *said altered lines*, as is provided for the *present lines* by *existing laws*."

Pausing to consider this language by itself we ask what occasion was there for a *new* grant. Its old grant as enlarged had never been resumed by congress.

The change of line was only between St. Cloud and "the point of intersection with the original grant at or near Otter

Tail or Rush lake "— a point sixty or seventy miles southwest of the famous point under the repealed joint resolution of July 12, 1862. There was clearly no need of legislation, except as to the altered portion of the line, and as to that only to give the company the same rights as along the existing line. Again, what line was "the line of the original grant at or near Otter Tail lake?" etc., and what "the present line" if not that of the Shepard survey filed in the department of the interior at Washington? Was this a scheme by which the St. Paul & Pacific Company was to relinquish its grant from St. Cloud northeast to Lake Superior and from Crow Wing to the point west or northwest along the Shepard line for a mere bagatelle? What did congress have in mind when coming to the proviso, we find that the first stipulation it made was that "This *change* shall in no manner *enlarge said grant?*" What grant? Clearly that the relocation of the existing grant should not enlarge it. Any other reference makes the language unmeaning and absurd.

It was clear that the St. Paul & Pacific Company was to release not only all the grant for the branch to Lake Superior, but also all the lands along the "Shepard" line from Crow Wing westward that did not fall within the limits of its new location. Now if congress did not understand and intend the act of 1871 should operate as we claim, why should it put into the act when we were to release so much, the condition, that "this change shall in no manner *enlarge said grant?*"

This act was to take effect "upon being in accord with the legislation of the state of Minnesota, namely, that it was to be a location of the grant to it which under its legislation could be used in building the road upon such altered line; that such alteration had the consent and authority of the state.

Further, proper releases were to be made "to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior. The abandoned lines are clearly defined in the act. The entire grant was not to be released. The entire lines were not to be abandoned. The abandoned lines are such parts of the old lines as were within the scope of the act and the occasion of making it.

And these releases were to be made so that "*such lands* released shall be considered as immediately restored to market without further legislation," so that on the subsequent definite location of the line of the Northern Pacific Railroad Company, the released lands would enure to it under its grant; but now the claim is that the complainant shall have the lands along the new location to the extent it should be new too; that the Northern Pacific Company shall be enabled to "keep its cake and eat it too."

All our company wanted was a right to relocate its line and use the land along it to build its road within the limits of the alteration. The state had consented already — consent of congress was necessary — and congress by the act of March 3, 1871, consented too.

Counsel for complainant in the court below resorted to a very ingennious gloss upon the provision in the act of March 3, 1871; that the lands along the new line or such part of the line as was new "should be taken in the same manner along said altered lines as is *provided for the present lines by existing laws*," and argued that the provisions in the acts of March 3, 1857, and March 3, 1865, in relation to lands *theretofore* reserved, are to be deemed and taken as reenacted with the act of 1871 and as having been incorporated therein by express reference so that the word "theretofore" means "thereafter" at any time before March 3, 1871.

This contention is, we submit, without merit, and contrary to the express language of the act, and besides there is no reason for resorting to a fanciful and narrow construction, except to defeat the plain intent of the act, and give to the complainant the lands released as well as those which were to be the consideration for them. The act settles this question. The lands are to be taken along the new lines in the same manner they were to be taken along the old lines under existing laws — that is to say, the existing laws as to reservations are to apply just as they did to the old line, and no reservation could be operative that had not been made when the former acts were passed. This does not justify the reading of "heretofore" in respect to these acts, as "hereafter," under existing laws along the old lines. Reservations made after the dates of the acts, could not be excluded from the grant, and such is the rule of the act of 1871. The word "heretofore" does not cover any other or greater period of time by the act of 1871 than it did originally and there was no reason why it should. This could affect no one but the complainant, for, as to purchasers or pre-emptors and cases of actual appropriation of lands, they were excepted by other provisions of the acts of 1857 and 1865 and indemnity is allowed for such losses.

It is said, however, that the Saint Paul & Pacific Railroad Company had no grant under the acts of 1857 and 1865, from St. Cloud to St. Vincent along the line of its route as now located and could not have located any line under its said grant where its line now passes, and therefore the act of 1871 is a new grant. The grant under the acts of 1857 and 1865 was never released, except as to a certain part of it. The St. Paul & Pacific Railroad Company had a right to complete the location of its line under these acts.

The state, the trustee of the United States, consented to and authorized the location from St. Cloud, instead of Crow

Wing. All that was needed was the consent of the United States and this was granted upon certain conditions, one of which is that "this change shall in no manner *enlarge said grant*." It could make no difference where the location of the line should be made, whether directly west or nearly so from Crow Wing or by a diagonal line from St. Cloud to Glyndon and then proceed north to St. Vincent. The supreme court of Minnesota, in *Nash v. Sullivan*, 29 Minn., 206, held that: "The only alteration authorized by this act (March 3, 1871), was that the eastern end of the St. Vincent branch *might be swung down from Crow Wing to St. Cloud*, from which the *altered portion* of the line might be built so as to enter and intersect with the *former line at or near Otter Tail or Rush Lake*. From this last point it contemplated the building of a road upon the old line up to St. Vincent, for the object of allowing the change is stated to be 'to form a more direct route to St. Vincent.' . . . The land grant between Otter Tail and St. Vincent, of which the land in controversy is a part, was wholly unaffected by the act of March 3, 1871."

This matter of location or relocation of the grant was one entirely between the United States and the railroad company and no other party has a right to call in question what was done in that respect. *Baker v. Gee*, 1 Wall., 333, 337; *Grinnell v. Railroad Company*, 103 U. S., 739, 740. Besides, no rights on the part of the Northern Pacific Company had then attached to any of these lands. It had neither made a line of definite location, nor built any road, and the legislation in question was no impairment of its rights.

Northern Pacific Railroad v. Traill Co., 115 U. S., 609.

Sinking Fund Cases, 99 U. S., 700, 719.

Kansas Pac. Co. v. Atchison Railroad, 112 U. S., 414, 421, 422.

The construction of the complainant of the act of congress of March 3, 1871, seems to us a gross perversion of the lan-

guage and plain intent of congress, as shown by state and congressional legislation relating to this enterprise.

The case, in principle, is the same as that of *Grinnell v. Railroad Co.*, 103 U. S., 739, 743, 744, except that in that case no relinquishment of lands along the abandoned line was required. But it was held, however, that claiming lands along the new line would amount to an abandonment of lands along the old line, and an exchange of them for lands along the new one. This case is ample authority to show that the filing of the map of location along the new line from St. Cloud to St. Vincent November 18, 1871, was a valid and sufficient release and relinquishment of the lands along the old lines; that this act became presently operative upon its approval has already been shown. At this time there had been no map of definite location of the line of the Northern Pacific Company filed, and there is nothing to show that it had built any portion of its road. So far as its rights were concerned, for reasons already stated, congress might by this act repeal, modify or alter its grant. Certainly it might do so upon its own application. That this was done upon its own application has already been pointed out and established by abundant proof of the most cogent character.

A. The act of congress of March 3, 1871, became operative presently so far as to enable the railroad to comply therewith. We are to look at the substance of what was intended, and not to stick in the letter.

People v. Utica Insurance Co., 15 John., 358, 380, 381.

The meaning of the act is that the St. Paul & Pacific Railroad Company should not have the benefit of the act of 1871 unless it released or relinquished the acts along the abandoned lines, so as to reinstate the United States in its former title thereto, so far as it was in the power of the

company to do so, nor unless the change of line should be in accord with the legislation of Minnesota, in respect to its railway system. The act belonged to that class of cases mentioned in *Burr v. Blading*, 14 Cal., 357, where it is said:

"Laws may be absolute, dependent on no contingency, or they may be subject to such conditions as the legislature may impose. They may take effect only upon the happening of events which are future and uncertain, and among others the voluntary act of the parties upon whom they are designed to operate. They are none the less perfect and complete when passed by the legislature, though future and contingent events may determine whether or not they shall ever take effect."

Mooers v. City of Reading, 21 Pa. St., 202.

B. The validity of the *release or relinquishment*, and the question whether it was in accord with the legislation of Minnesota, would seem to depend upon the construction of the legislation of that state. By its supreme court that question has been decided in our favor, holding that the act was in accord with the legislation of Minnesota in *Nash v. Sullivan*, 29 Minn., 206. The act of congress authorized the St. Paul & Pacific Company *presently* to proceed under and comply with its terms. It gave the company *the election between two different and inconsistent rights*, either to adhere to its then existing line with the present partial location of its grant, or to change the same to the new one as therein specified; and when it made its election by the passage of the resolutions of March 22, 1871 (St., fols. 161–165, and filed the same November 18, 1871, with the plat of its new location, in conformity with it, with the secretary of the interior, it determined its choice in favor of the new lines, and the rights that were to pertain to them, and conclusively and absolutely relinquished and abandoned the old ones and the rights connected therewith, so far as the change affected

them. These documents were a *valid release* within the act of congress of March 3, 1871, and by the choice and the election of the St. Paul & Pacific Company thus made and determined, it became as effectually concluded and estopped as by a formal release, such as was, in fact, afterwards authorized, executed and filed December 19, 1871, with the secretary of the interior. St., fols. 165–174. There was no valid legal objection whatever to the location or release by the resolution first mentioned when the map was filed November 18, 1871. The papers then filed *were a substantial compliance with the law*. To hold that more was necessary, is to sacrifice substance to form. The railroad company had done its entire duty. The secretary stood on a mere formality without real merit. The railroad company had placed it beyond its power to withdraw from the election and relinquishment thus made.

The principle involved is sustained by the case of *Mariner v. Milwaukee & St. Paul Railway Co.*, 26 Wis., 89. It is a clear case of estoppel by election. It is also directly sustained by what is said in *Grinnell v. Railroad Co.*, 103 U. S., 743, 744.

The failure of the secretary to perform his duty in the premises or the fact that he insisted on an immaterial objection could not prejudice the rights of the company. *Van Wyck v. Knevals*, 106 U. S., 367.

C. The *formal* release was certainly sufficient, and when executed it related back to the principal act, to wit, the act of congress, March 3, 1871, the location and survey under it, and filing the same November 18, 1871, which is really a sufficient release at law and certainly good in equity. In that case the execution and filing of the formal release relates back to its equitable origin. So, also, in respect to the location and survey, as to the point that it did not connect "with the *line of the original grant* at or near Otter Tail or Rush

Lake, so as to form a more direct route to St. Cloud;" and that its route was some fifteen or twenty miles from these lakes. As to this latter matter the secretary concluded that his objections were not well taken, and he approved the location notwithstanding. Orig. Rec., 1110.

In this connection it seems proper to advert to the doctrine of relation, as it is relied on to a considerable extent by the defendants, and is so universally applicable to titles of the kind in question.

CRUISE, in his work on Real Property (vol. 5, pp. 510, 511), lays down the doctrine with great distinctness. He says:

"There is no rule better founded in law, reason and convenience than this, that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act and operate from the substantial part by relation."

Accordingly in the case of *Landes v. Brandt*, 10 How., 348, 372, 373, this court, citing this authority and others, said:

"Applying the doctrine of relation and taking all the several parts and ceremonies necessary to complete the title together as one act, then the confirmation of 1811 and the patent of 1845 must be taken to relate to the first act, that of filing the claim in 1805. On this assumption any more conveyances made by the confirmee or by the sheriff on his behalf of a date after the first substantial act are covered by the legal title and pass that title to the alienee."

Jackson v. McMichael, 3 Cow., 75.
Crowley v. Wallace, 12 Mo., 142.
Ex Parte Fuller, 2 Story, 327.

In *Gibson v. Choteau*, 13 Wall., 100, 101, the doctrine is thus laid down:

"By the doctrine of relation is meant that principle by which an act done at one time is considered by a fiction of law to have been done at some antecedent period. It is

usually applied where several proceedings are essential to complete a particular transaction, such as a conveyance or deed. The last proceeding which consummates the conveyance is held, for certain purposes, to take effect by relation as of the day when the first proceeding was had. Thus in the present case the patent which was issued in 1862 is said to take effect by relation at the time when the survey and plat of the location made in 1815 were returned to the recorder of land titles under the act of congress. At that time the title of the claimant to the land desired by him had its inception, and so far as it is necessary to protect his rights to the land and the rights of the parties deriving their interests from him, the patent is held to take effect by relation as of that date."

The requirement was to make "a more direct route to St. Vincent," and the subsequent approval of the route by the directors, by the secretary of the interior, by the state and by the United States, relate back also to the date of filing the original map of location, and resolutions, and even to the act of congress of March 3, 1871, under which the same was so filed. The act of congress is the *substantial* thing, and the location when consummated under it relates back to the act itself. This is familiar doctrine as to all other cases of location, and it is clearly applicable to this. The act of March 3, 1871, was merely an amendment to the acts of March 3, 1857, and March 3, 1865. If it had been formally framed as such, as it was in substance, there could be no possible question but that when the location was made it would relate back to the date of the former acts themselves, so as to antedate all subsequent claims, save those excepted by the acts themselves; and the act of congress of March 3, 1873, approving the route as then located, is to be construed as a ratification of the location, relating to the date of location itself and to the acts of congress of 1857 and 1858 under which it was made.

D. These are questions between the company or between the state and the United States in locating and giving pre-

cision and certainty to our grant, and which the Northern Pacific Company cannot be permitted vicariously to raise in this litigation.

Schulenberg v. Harriman, 21 Wall., 62.

It is there said:

"That no individual can call in question the validity of the proceedings by which precision and certainty is thus given to the title, where the United States are satisfied with them."

Grinnell v. Railroad Company, 103 U. S., 739, 740.
Baker v. Gee, 1 Wall., 333, 337.

The act of congress of March 3, 1873, provides, "That the time for the completion of the railroad . . . from St. Cloud to St. Vincent in said state, *as now located with the approval of the secretary of the interior*, be extended nine months," etc. Congress approved the act of the secretary of the interior.

This act of congress thus operates to give legal priority to the grant of the St. Paul & Pacific Company,

That both the state and the United States were satisfied with this location and the release, and also that the act of congress of March 3, 1871, was in accord with the legislation of Minnesota, appears from the act of congress of March 3, 1873, already quoted, and the act of the legislature of Minnesota of March 11, 1873. Spec. Laws of Minn., 297; St., fols. 219–222; and the decision of the state supreme court in *Nash v. Sullivan*, 29 Minn., 206. The circuit court in another case, *Railway Co. v. Greenalgh*, 26 Fed. Rep., 564, held that the act of 1871 was in harmony with the state legislation.

E. It is clear that the act of congress of March 3, 1871, was in accord with the legislation of Minnesota.

What was really required and intended by the provision that the act of congress of March 3, 1871, should not take effect unless in accord with the laws of Minnesota was, that such change should be in accord with the railroad policy and system established by the state, and in aid of which these grants were made; that it was not to take effect unless it was within the authority of the St. Paul & Pacific Company, as a state corporation, as it clearly appears it was, from the state acts of 1864 and 1865, already cited, to locate and build a road on the proposed new route; the intention being to secure to the state in aid of its local and general interests the right to determine what railroads should be built and operated within its borders, as a part of its system, and the provision is founded in the same policy as that contained in section 18 of the charter of the Northern Pacific Company, namely:

"That said Northern Pacific Railroad Company shall obtain the consent of the legislature of any state through which any portion of said railroad line may pass, previous to commencing the construction thereof; but said company may have the right to put on engineers and survey the route before obtaining the consent of the legislature."

F. It was not required that the St. Paul & Pacific Company should procure a release of any other company which might have or had made a claim to any part of the land grant on either of the branches of its road. The St. Paul & Pacific Company only was to make release, and it was to be a release of such rights as its possessed. This is necessarily implied from the language used. Although the grant of 1857, as increased by the act of 1865, had been made to the state, no release was required of it nor any consent on its part to the change, save as above indicated. The consent of the state to such a change of the branch line to St. Vincent is found in the act of the legislature of Minnesota of February 6, 1864, already cited. St., fol. 48.

There was no reason why the state should have consented as the grantee of the lands.

"The legal title under the grant goes to the state, but the equitable right vests in the company. The state cannot dispose of the lands; she simply holds them for the use and benefit of the company; the act of congress providing how her trust shall be discharged and the legal title conveyed to the company."

Van Wyck v. Knevals, 106 U. S., 365.

The state was a naked trustee, with no proprietary or beneficial interest.

THE MINNEAPOLIS & ST. CLOUD RAILROAD COMPANY HAD NOT ACQUIRED ANY INTEREST WHICH WOULD DEFEAT THE OPERATION OF THE ACT OF MARCH 3, 1871.

1. As to the Minneapolis & St. Cloud Railroad Company, it is sufficient to say that there is no proper evidence to show that it ever accepted the grant of the lands relating to the branch from, at or near St. Cloud to the waters of Lake Superior. It is proved that it has not located or built any part of such road, and there is no provision in its charter in respect to its receiving or earning any part of the land grant, and no right vested in it prior to the legislation of congress contained in the act of March 3, 1871, and March 3, 1873. The legislation that ensued was no impairment of its rights. 112 U. S., 421, 422.

Conceding, for the purposes of this argument, that the state might recall whatever right it gave to the St. Paul & Pacific Company, in relation to this particular branch of road, yet after such recall the state would hold the lands

still as the trustee of the United States, and the United States could lawfully make the arrangement in relation thereto, and for the resumption of them upon the release of the St. Paul & Pacific Company contained in the act of congress of March 3, 1871, and neither the state nor the Minneapolis & St. Cloud Railroad Company could be heard to object or be allowed to assert or hold any adverse claim. The Minneapolis & St. Cloud Railroad Company had acquired no *vested* rights. The power of the state to dispose of these lands was contained in the acts of congress of March 3, 1857, and of March 3, 1865, and this absolute and unconditional transfer of the part of them above mentioned by the legislature by its act of March 7, 1870, to the Minneapolis & St. Cloud Railroad Company in advance of its having constructed any road or even located the line of any, although it is said to be for the purpose of constructing one, was *ultra vires* and void. It passed no interest whatever. The acts of congress above mentioned declare in substance:

"That the lands should be exclusively applied to the construction of the road in aid of which they were granted, and to no other purpose whatever, and should be disposed of only as the work progressed. It provided that their sale should be made in parcels, *as specified portions of the road were completed, and only in that manner*. The evident intention of congress was to secure the proceeds of the lands for the work designed, and to prevent any alienation in advance of the construction of the road, with the exception of the first one hundred and twenty sections. The act made the construction of portions of the road a *condition precedent* to any conveyance by the state. No conveyance in disregard of this condition could pass any title to the company. It was so held in *Schulenberg v. Harriman*, 21 Wall., 44, where we had occasion to consider provisions of a statute identical in terms with the one before us. The act of May 22, 1857 (Minn. Stat.), passed in advance of any work on the road, conveyed no title to the Minnesota & Pacific Railroad Company beyond the first one hundred and twenty sections. Of course the mortgage or deed of trust subsequently exe-

cuted by that company, so far as it covered such lands, *was inoperative for any purpose.*"

Farnsworth v. Minn. & Pac. R. R. Co., 92 U. S., 65.
Laws of Minn., 1857, act of May 22, 1857, sec. 16.

The attempted transfer of the lands for this branch by the state, by act of March 7, 1870, was not of a right to build the road and earn the lands in compliance with its power under the acts of congress, but was an attempt at an absolute and unconditional alienation of them, which would have vested the fee of the lands in that company, but for the restraint on the power of alienation of the state.

For these reasons no right whatever to any of the lands along the abandoned branch line from St. Cloud to the waters of Lake Superior ever vested in the Minneapolis & St. Cloud Railroad Company, and congress might lawfully make the arrangement it did with the St. Paul & Pacific Company by the act of March 3, 1871.

But these objections sound ill in the mouth of the company which procured the passage of the act, made the location it now questions, and profited by it through the restoration of lands along the Crow Wing line westward, to the extent of over four hundred thousand acres, and got, or claims besides, all the lands within its limits, along the abandoned line from at or near St. Cloud to the waters of Lake Superior. The complainant company maintained and insisted upon the validity of this location, and marketed and sold the bonds secured on this grant containing the recitals, and showing that the line was legally located under the act of March 3, 1871, shown in the record. St., fols. 178–191, 225–230.

It is, therefore, submitted that all these objections to the definite location and map of route filed under the act of March 3, 1871, with the secretary of the interior, as re-

quired by the act of congress of March 3, 1865, section 7, are wholly unfounded. It seems clear that these questions are not open now to the complainant, and that it is to be considered as estopped by its own conduct in the premises from urging them.

For these reasons we submit that the title of the St. Paul, Minneapolis & Manitoba Railway Company purchased at the forclosure sale on the fifteen million mortgage, is paramount and superior to any title or claim of title on the part of the Northern Pacific Railroad Company, to any and all lands in the odd-numbered sections within ten miles on either side of its road as located by the St. Paul & Pacific Company under the act of congress of March 3, 1871, and to the twenty-mile indemnity limits which it became and was the duty of the secretary, under section 7 of the act of March 3, 1865, to withdraw when such line of definite location was filed.

3. By section 7 of the act of March 3, 1865, upon the filing of the map of location of the line of route, it became and was "the duty of the secretary of the interior to withdraw from market the lands within the provisions of this act." Upon the filing of the map of definite location November 18, 1871, this became and was his positive duty. The rights of the St. Paul & Pacific Company could not be prejudiced in the least or affected by his neglect or delay to perform that duty.

Van Wyck v. Knevals, 106 U. S., 360.
Kansas Pacific Ry. Co. v. Dunmeyer, 113 U. S., 634, 635.

"The land consisting of the alternate sections designated by odd numbers within the limits of the twenty miles was withdrawn, and so much of it as had not been previously sold, reserved or otherwise disposed of or to which a home-

stead or pre-emption right had not attached *was thus* appropriated to the satisfaction of the grant. It could not be subsequently applied to other purposes or devoted to the claims of private parties. It was immediately taken by the grant."

Wood v. Railroad Co., 104 U. S., 329, 331, 332.

We have already seen that these lands at the overlap caused by the intersection of their respective limits had not been reserved to the Northern Pacific Company, or to the United States for its use. That the rights of the complainant as against intervening claimants under grants subsequent to the date of its grant, dated only from the filing of the map of definite location of the route of its road in the office of the commissioner of the general land office. No claim of any kind originating prior to that date could be overreached by its grant, and its title could not relate back according to the terms of its grant as to such lands to the date of it. Act of July 2, 1864, sec. 3. The objection of the secretary of the interior to the map and location of the line from St. Cloud to St. Vincent filed November 18, 1871, proved to be utterly unfounded. It was so conceded by him except as to the matter of the formal release, which we have seen was clearly unnecessary. It was a valid and operative location when filed, and when approved the rights of the St. Paul & Pacific Company under it related to the dates of the acts under which it was made; certainly to the date of the act of March 3, 1871. There had then been no withdrawal of any lands in favor of the complainant from disposition for railroad purposes, or for the satisfaction of subsequent land grants which were certain to overlap and cross its line of location whenever it might make it. There is no proof to show that when or after it made its alleged definite location from Thompson or the Junction to the Red River of the

North any valid withdrawal of lands had been made in its favor except from *sale, entry or pre-emption.* These lands had not then been *appropriated or applied* to the satisfaction of the complainant's grant, and it therefore became impossible for the complainant to maintain its claim to the lands in the conflict under its said grant. Any want of conformity of a constructed line with a located one, as, for instance, that it did not go exactly to Rush lake or Otter Tail lake, will not aid the complainant in the least. This objection, if valid, would leave the title in the state. The complainant cannot raise this question; besides, it is not set up or insisted on in the answer to the cross-bill.

Grinnell v. Railroad Co., 103 U. S., 742, 743.

Another matter in this connection is worthy of consideration, and is very important, namely: that it was so arranged that the line of definite location of the St. Paul & Pacific Railroad Company, under the act of March 3, 1871, was filed three days before the line of definite location of the Northern Pacific Railway Company through the state of Minnesota. It is to be remembered that the Northern Pacific Company was managing the entire matter of making these locations of definite lines or route, and of filing them. The purpose of filing these maps in this particular order is obvious, namely, that the grant of the Northern Pacific Company should attach to all the lands released by the St. Paul & Pacific Company. The act of March 3, 1871, provided that upon the execution of said release such lands so released shall be considered as immediately restored to market without further legislation. That is to say, the lands along the branch from St. Cloud to Lake Superior, and along the line from Crow Wing westward and northwestward, and within the range of the grant of the Northern Pacific Railroad Company, were to be so released that its

grant should attach to them. That it did so attach, that it has obtained and claimed these lands, is a conceded fact, and they amounted in quantity to nearly or quite as much, it is believed, as the lands in controversy in this suit. O. Rec., 1202.

a. The Northern Pacific Company was to profit largely by this arrangement, namely: it had the right to take indemnity lands throughout the entire limits of its grant, from Lake Superior to the Puget Sound, to make up for the loss it might suffer by reason of the priority of grant of the St. Paul & Pacific Company in crossing and overlapping its line.

b. It could get no indemnity whatever by the provision in section 3 of its grant for lands which would have been lost to it from Crow Wing westward to the point of intersection, by reason of the line of its route being found "upon the line of another railroad route, to aid in the construction of which lands had been heretofore granted by the United States, as far as the routes are upon the same general line." The amount of land so granted was to be deducted from the amount granted by the Northern Pacific act. It could get no indemnity whatever for any loss so suffered.

c. The change of location subjected to its grant a very large body of lands between Crow Wing and the waters of Lake Superior, which would otherwise have been taken to satisfy the grant for a line of road from at or about St. Cloud to the waters of Lake Superior, which was vacated and released under the act of March 3, 1871.

After acquiescing and insisting on the validity of the relocation of the St. Paul & Pacific Company, and that it had priority over the Northern Pacific Company within its new limits, after it had marketed the bonds secured by the $15,000,000 mortgage, with the recitals contained therein as hereinafter stated, it now repudiates its former position

and seeks to maintain the priority of its title, and hold the released lands and the consideration for which they were released too. To this end it attempts to maintain that the act of March 3, 1871, created a *new* grant and did not provide for the relocation of an existing one.

Its pretensions in this respect are plainly contrary to all that was understood and clearly intended and rest on the most narrow and technical grounds.

These pretensions it ought to be held estopped from asserting for the reason that they are not only asserted in bad faith, but to maintain them is to defeat the intention of congress and the state legislature deducible from, if not clearly expressed by, the act of March 3, 1871, and contemporaneous legislation *in pari materia*. And we refer in addition to the argument on the question of construction, to those contained in our next point, especially on the subject of estoppel.

Regarded as a matter of intention deducible from the legislation in question, aside from the transactions of the companies interested, it is too plain, we submit, for argument, that this was intended as an exchange of lands, as a transfer to the new location made by the St. Paul & Pacific Railroad Company of the prior rights which it had along existing lines so to be vacated.

Reasoning of the Court Below, on the Effect and Construction of the Act of March 3, 1871, Holding that it Created a New Grant.

The opinion of the circuit court, found in the Record, pages 172–185, in which the questions we have been discussing are considered, deserves particular attention.

After noticing the general rule that neither priority of location or construction but priority in date of grant deter-

mines the title, a considerable space is necessarily taken up with a statement of the several acts of congress under which the respective parties claim. 172–176. The court, after stating the contention of the defendants, that the lands were "granted by act of congress of March 3, 1857, and located under the act of March 3, 1871," proceeds to say that "Reading the legislation of congress as interpreted by the geography of the state, it is obvious that prior to the act of March 3, 1871, there was no thought of a road down the valley of the Red River, or crossing the Northern Pacific line within a hundred miles of Glyndon, and the fair construction of that act makes a new grant in lieu of the one revoked."

In point of geography, the terminus of the St. Vincent Extension at the international boundary is about three hundred miles north and one hundred and twenty-five miles west of St. Cloud. It certainly was not very material where the westing of the line was made; engineering or business and traffic necessities might dictate that it be made towards the southerly terminus. Looking at the map, we cannot admit that the bend is unusual, much less gigantic.

But the court, in passing judgment on this feature of the case, considers only the act of March 3, 1857, and does not give due weight to subsequent legislation, state and congressional, looking to the line of the grant finally adopted.

It is a mistake, we think, to say that the Northern Pacific Company, on March 3, 1871, was in a position to complain of this detour to the westward. It had not made any definite location of its line; it had not built any road; it had acquired no vested rights; and besides, it was promoting and insisting on the very change now complained of with all its might and main. Congress, by the act of March 3, 1871, recognized the detour and the necessity for it, in providing that the altered line was to go "from St. Cloud to a point

of intersection *with the line of the original grant* at or near Otter Tail or Rush Lake," which is as far west, within about thirty miles, as Glyndon. The reasoning of the court below gives no effect whatever to this significant provision of the act of 1871; but, on the other hand, it puts great stress and importance upon the point of intersection of the tenth standard parallel with the fourth guide meridian, some sixty or seventy miles further eastward, mentioned in the joint resolution of July 12, 1862, but which was repealed by the act of 1865, and the grant put in the same state or condition as if it had never been passed. See act of March 3, 1865, sec. 9. All this legislation, both state and congressional, originated with men, as we may say, to the manor born, prominent citizens of the state of Minnesota in its legislature and in congress. Through them congress undoubtedly derived all the knowledge it possessed on the subject, and it seems eminently fit and proper to regard this legislation relating to important state interests from the standpoint occupied by these prominent citizens of Minnesota, and to consider it in the light they undoubtedly did consider it. The geographical argument, it seems to us, properly considered, leads to directly the contrary result from that arrived at, and it is not a fair inference to say that in the act of 1871 "the description may have resulted from *congressional ignorance of geographical facts.*" It is safe to assume that this legislation was promoted and procured by parties in interest with reference to actual facts, and to accomplish practical purposes. Indeed, this was shown to have been the fact. It was competent, therefore, for congress to refer to "the line of the original grant" as it did, and it was not necessary to refer to any survey *eo nomine.* The Shepard line extended to the northwest corner of town 142, range 40, and thence it was a line almost due north down the very broad valley of Red River of the North to St. Vincent, the es-

tablished terminus of the branch. This act, it is true, was passed after the grant to the Northern Pacific Company, and we may admit that no mere implication should defeat or limit its grant. We have here that which is much more to the purpose, that which is direct, clear and unequivocal. Besides, at this time the Northern Pacific Company had acquired no vested rights in the disputed territory, so that as donee of the United States it would have any right to complain of the act of 1871. This act, then, was a matter between the St. Paul & Pacific Company and the United States, and it was competent for congress, at the instance and solicitation of the delegation in congress from Minnesota, to pass it and have it operative, just as we claim it was intended to operate, and does in fact operate; and we submit that this action of congress is not open to judicial review.

Now as to the Northern Pacific Company, it sought and procured the passage of the act of 1871, as shown by the testimony of Mr. Rice, and dictated and controlled the location of the line, as it now exists, as shown in the testimony of Mr. Morris, the locating engineer. O. Rec., 827, 828, 619, 623–625. And when the location was in question, in the department of the interior, that company came to the rescue and insisted on it. O. Rec., 1013, 1014, 894–896.

Congress had a right (sec. 20) to alter, amend or repeal the complainant's grant, having due regard for its rights. It had no vested rights at that date, and was clamoring for the passage of the act of March 3, 1871, and to maintain the line located under it, which it is here now to overthrow.

All objection to legislation affecting private rights is removed by consent, and as to it and the location of line the maxim *volentibus non fit injuria*, applies.

Cushing v. Warrick, 9 Gray, 386.

The other facts upon which the court below relies to show that the point of intersection of the tenth standard

parallel with the fourth guide meridian was a point to which the branch road must go, had ceased to be factors in the case. There had been no actual survey or location further north in the direction of this point of intersection than Crow Wing. The act of 1871 provides that that road should go no further than Brainerd, to intersect with the road of the Northern Pacific Company. Previous to this, the detour to the westward mentioned by the court had been made by the line of 1869, and that line was in the legislative mind *as the line of the grant* which it had a right to recognize and treat as such in the passage of the act of March 3, 1871. Besides, the act of March 3, 1865, had secured to the state and those claiming under it the general right of making a location of this line, section 7 providing that "as soon as the governor of the said state of Minnesota shall file or cause to be filed with the secretary of the interior maps designating the routes of said road and branches, then it shall be the duty of the secretary of the interior to withdraw from market the lands embraced within the provisions of this act."

This, taken in connection with the provision of the joint resolution of July 12, 1862, completely extinguished "the provisions of said resolution as though it had not been passed," and it seems ought, if properly considered, to lead to the result for which we contend and not the one arrived at by the court below. The St. Vincent line was not *a new line*, therefore, except from St. Cloud to at or near Otter Tail lake. The old line from Crow Wing was a line the route of which was to be altered. It did not provide for the surrender of any grant; it provided for relinquishment from an existing grant of certain lands and for taking certain others in lieu thereof. It could not *transfer* an existing grant and accomplish the purpose. It could, however, as the legislature plainly intended, as we think, provide for relinquishing lands along a part of an

existing line in exchange for those along a line substituted therefor.

The case of *Nash v. Sullivan*, 29 Minn., 206, decided June 7, 1882, was an action to recover eighty acres of land in Polk county within the ten-mile limits of the line of the St. Vincent branch of the St. Paul & Pacific Railroad, north of the region of conflict, which had been certified to the state by the land department April 30, 1874, and patented to the state June 14, 1875, and conveyed by the governor of the state to the company February 22, 1877. In this case the court, at page 211, say:

"We think the manifest intent and effect of this act of March 3, 1865, was to restore to the St. Vincent branch the grant of six sections per mile which had been surrendered by an acceptance of the joint resolution of July 12, 1862, and to increase it to ten sections per mile; and therefore the act amounts to an affirmative grant of the latter amount. This is the practical construction that has been placed upon the act for over fifteen years, without question, by both the legislative and executive departments of the government of the United States and of the state of Minnesota. This land grant has been adjusted between the United States and the state and between the state and the railroad company and the lands certified and transferred upon this construction of the law; and of its correctness we have no reasonable doubt. And in any event it would, on considerations of public policy, be now too late to question its correctness unless it was clearly wrong."

Speaking of the effect of the act of March 3, 1871, the court, at page 213, says:

"The only alteration authorized by this act was that the eastern end of the St. Vincent branch *might be swung down from Crow Wing to St. Cloud*, from which point the altered portion of the line might be built so as to enter and intersect *with the former line at or near Otter Tail or Rush lake.* From this last point it contemplated the building of a road *upon the old line up to St. Vincent*, for the object of allowing the change is stated to be to 'form a more direct route to St. Vincent.' . . . The land grant between Otter

Tail and St. Vincent of which the land in controversy is a part was wholly unaffected by this act of March 3, 1871."

This decision of the state court is worthy of some consideration, we think, on the geographical question.

The idea that the point of intersection of the tenth standard parallel with the fourth guide meridian was intended to be a point to which the branch to St. Vincent would have to go — into a section of country not fit for the habitation of man, and still a solitary wilderness, had never entered the minds of any of the very able and practical business men, state officers and lawyers who had so much to do with these enterprises. Certainly, after the act of 1871, the branch was to go from St. Cloud to at or near Otter Tail lake. Is it to be supposed that it was intended that it should return thence sixty or seventy miles east to this famous point of intersection, and go thence to St. Vincent, when the line through Crow Wing was *to stop at Brainerd?*

WITHDRAWAL OF LANDS ON FILING MAP OF LINE OF GENERAL ROUTE OF THE NORTHERN PACIFIC COMPANY.

As already pointed out (*ante*, —), the decree seems to go not on any supposed superior right acquired by reason of prior definite location of its line, but upon the idea that the amended withdrawal so called of October 12, 1870, vested in the complainant some prior and paramount right to these lands, and attached its grant to them in some way before it filed its map of definite location, notwithstanding the filing a map of general route does not, like the filing of the map of line of definite location, vest in the company a right

to any specific land. "*It establishes no claim* to any particular section with an odd number."

Kansas Pac. R'y Co. v. Dunmeyer, 113 U. S., 636.
Mo., Kan. & Texas R'y Co. v. Kansas Pac. R'y Co., 97 U. S., 498.
Butz v. Northern Pac. R. R. Co., 119 U. S., 71–73.

The Northern Pacific Company fixed on an alleged line of general route through Minnesota only, so far as appears, July 26, 1870, and filed the same in the office of the commissioner of the general land office, August 15, 1870.

On the 16th day of October, 1870, it made and filed an *amended* line of general route varying in a very important manner from the former line, within the region of the conflict between the respective grants, and bringing the amended line much further south, insomuch that lands within the place limits of the grant to the St. Paul & Pacific Company and claimed by its supplemental or cross-bill, which lie within the alleged withdrawal under the amended line, to the amount of about seventeen thousand acres, were not within the withdrawal under the original line of *general* route. This is made clear by the answer to the supplemental bill and Schedules "A" and "B" annexed thereto. St., fols. 137, 138; P. Rec., 396, 398. Orig. Rec., 644, 645; Ex. 4 and Ex. A; 64 3Ex. 2, Ex. B. The map of definite location was filed in the office of the commissioner of the general land office November 21, 1871. Ex. 3; Orig. Rec., 643.

The effect was also to include within the alleged withdrawal under the *amended* line of general route other lands claimed by the complainant in its bill and which had been conveyed to the St. Paul & Pacific Company and are included in Schedules "C" and "D" annexed to the decree, but which were not within the alleged withdrawal under the

original line of general route. P. Rec., 198, 201, 238, 242. And the line or route of the alleged *definite* location lies still further south of the said amended line, where the lines of the two roads intersect each other at Glyndon.

The map produced by the complainant, on which these lines are delineated, with their respective land limits, will serve to make these facts more clear.

The withdrawal authorized by the sixth section of the grant to complainant was only for lands within twenty miles on each side of the line of general route for place limits.

When the line of definite location was filed, this superseded the withdrawal of October 12, 1870. The complainant not having acquired any interest, legal or equitable, to any particular lands under or by reason of the withdrawal of 1870, its rights outside its place limits thus *definitely* fixed, depended solely on its right to have indemnity lands to make up for losses within the place limits, in accordance with the terms of its grant. It took nothing as to such indemnity lands by reason of such withdrawal. Whether it would ever become entitled to any of such lands, as indemnity, depended upon the result as shown by the definite location of *its entire line*, and as to the lands in Schedules "C" and "D," annexed to the decree, the case of *Railroad Co. v. Herring*, 110 U. S., 27, 38–42, is clearly in point and decisive against the complainant's pretensions to any of the lands in Schedules "C" and "D," as the defendants have a regular patent from the state, and the state has one from the United States, for these lands. As to these lands, on behalf of complainant, there is neither proof of selection or approval of selections.

The decree of the court below proceeds upon the ground that the *amended* line of *general* route was lawfully made and filed, and operated under complainant's grants to appropriate to its use every odd numbered section within *forty* miles on either side of its definite location and within

twenty miles of the line of its general route, by virtue of the statutory withdrawal under the sixth section of its grant, so that no lands thus situated could be acquired or held by the St. Paul & Pacific Company, or its assigns.

The effect of section 3 of the grant to the Northern Pacific Company is, as we have shown, that every possible mode of sale or disposition of the lands which might exist within its limits should continue; that prior to filing the map of definite location such lands might be reserved or granted for other purposes or otherwise appropriated, occupied by homestead settlers, pre-empted or otherwise disposed of subject to a statutory withdrawal thereof upon filing the map of general route under section 6 "from sale, entry or pre-emption before or after they are surveyed, except by said company *as provided in this act*," that is to say, they might be sold, etc., by the company, if not otherwise disposed of, so that on filing the line of *definite* location of its road its grant should attach to them, and it should thereafter earn them by building its road.

The provisions of this act on the subject of withdrawal are exclusive and left no discretion in the premises to the department. It excluded departmental action entirely. The maxim *expressio unius est exclusio alterius* applies, and excludes any action on the part of the department. The withdrawal authorized is exclusive and a *congressional* one — a withdrawal *by force of law*. It was not in the power of the secretary of the interior to enlarge, or restrict or modify it. He had no power of revision or modification of the act of congress. Adding the words, "and other disposal," to a withdrawal that this court has held was a work of supererogation on his part, and which could serve only to give notice of what the law had already accomplished, could not be attended by any legal consequences, and the case does

not come within the rule of *Wolcott v. Des Moines River Co.*, 5 Wall., 681.

Inasmuch as the definite location of the St. Paul & Pacific line was first made, no way existed for excluding these lands from the operation of its grant but by attempting to maintain the alleged statutory withdrawal of October 12, 1870, made before the act of March 3, 1871. If the act of 1871 is a new grant, as the court below concluded it to be, that does not, in this view, aid the complainant, unless by force of the law the lands in controversy were withdrawn in consequence of filing the map of general route of August 13, 1870. This point we have already discussed quite fully. It is sufficient to say that the withdrawal was statutory and for the limited purpose of preventing *sales*, *entries* or pre-emptions. It was, as we have contended, no *appropriation* of the lands to the complainant, and did not *attach* its grant to any lands. The filing of the amended route was, of course, inoperative. It was not in the power of the railroad company or the land department to alter or modify this statutory withdrawal, if it was of any avail whatever.

The provision of section 6, act of July 2, 1864, defining the statutory withdrawal from sale, entry or pre-emption, is this:

"And the odd sections of land *hereby granted* shall not be liable to sale, or entry or pre-emption before or after they are surveyed, *except by the said company as provided in this act*."

The last clause does not supersede the terms of the grant in section 3, or operate to reserve any lands for complainant, except those *granted* by the act, and its right to sell, etc., is limited by all the provisions of the act. If, after the statutory withdrawal, the company did not definitely fix and file the location of its route, it could not claim the right to sell, or that the lands were reserved, nor could it, if it failed to build

its road. In like manner if, before filing its definite route, any of the lands should be "reserved, *granted*, etc.," it could not claim the right to sell them. The withdrawal was limited and *sub modo* only.

The decree of the court below, it will be seen, proceeds on the theory that by virtue of the amended line of general route, and by virtue of that alone, these lands were withdrawn from the operation of our grant. But sufficient has been said upon that subject. The act impliedly forbids withdrawal for any other purpose than from "sale, entry or pre-emption." Filing of a map executes all the withdrawal the act contemplates.

Butz v. Northern Pac. Railroad Co., 119 U. S., 71–73.

The company, and the secretary as well, had exhausted their powers in the premises, as shown in cases cited on page 154.

"The act of congress not only contemplates the filing by the company in the office of the commissioner of the general land office of a map showing the definite location of the line of its road, and *limits the grant* to such alternate odd sections as have not at that time been reserved, sold, *granted*, or otherwise appropriated, and are free from pre-emption, grant, or other claims or rights, but it also contemplates a preliminary designation of the general route of the road, and the exclusion from sale, entry, or pre-emption of the adjoining odd sections within forty miles (twenty in the states) on each side, until the definite location is made." When the map of general route has been filed: "The law withdraws from sale or pre-emption the odd sections within forty miles (twenty in the states) on each side."

"Although the act does not require the officers of the land department to give notice of the withdrawal of the odd sections from sale or pre-emption, it has been the practice of the department in such cases to formally withdraw them." "This notification (of withdrawal) *did not add to the force*

of the act itself, but it gave notice to all parties seeking to make a pre-emption settlement that lands within certain defined limits *might be* (not had been) *appropriated* for the road."

Butz v. Northern Pacific Railroad, 119 U. S., 72, 73.

It was not the intention of congress that a department or bureau officer should revise its action or interfere to defeat the policy in which the peculiar grant contained in the third section was founded, as already shown.

1. It seems clear, therefore that, testing the rights of the parties by the acts of March 3, 1857, and March 3, 1865, as such acts have been construed by this court, by virtue of the doctrine of relation, the title of the appellants claiming under them could not be in the least degree affected by the alleged withdrawal made thirteen years after the passage of the first act and five years after the passage of the second act. Our grant under these acts has never been vacated or recalled, and our line was located wholly under them and in conformity with the subsequent act of March 3, 1871, and the title of the state and of the St. Paul & Pacific Railroad Company stands as if the sections and parts of sections in its place limits, and in controversy here, had been specifically described in the two first-named acts.

2. If our view as to the effect of the withdrawal of October 12, 1870, is correct, then our title is necessarily the superior one, upon the assumption given that the act of March 3, 1871, created a *new* grant, and that it is the sole ground upon which we can make claim in the disputed limits.

3. If the act of March 3, 1871, was a *new* grant and not merely an act providing for a partial relocation of our line under the acts of 1857 and 1865, upon the conditions therein specified, and the alleged withdrawal operated only to prevent sales, entries and pre-emptions, then as the map of our

definite location was filed with the secretary of the interior November 18, 1871, when it became his duty "to withdraw from market the lands embraced" in our grant and to indicate the lands granted (Act of March 3, 1865, secs. 7 and 2) three days before the filing of the map of definite location of the line of the Northern Pacific Company, November 21, 1871, we have therefore priority of right over the latter company to all lands in our place and indemnity limits as well.

Our rights in the premises could not be lost or impaired by the neglect or refusal of the secretary of the interior to perform his duty in the premises.

Van Wyck v. Knevals, 106 U. S., 360.
Kan. Pac. R'y Co. v. Dunmeyer, 113 U. S., 634, 635.

We have already argued at length that such withdrawal only protected such lands from "sale or entry or pre-emption;" that it did not suffice to attach the grant of the complainant to any tract of land thus situated, or to appropriate it to the satisfaction of its grant. *Ante*, 92, 93, *et seq.*

We submit that the view thus taken by the court below is radically and wholly erroneous, and it is plain that it has resulted to the injury of the defendants. O. Rec., 419, 461, 466, 470, 558, 572, 529, 530, 534; St., fols. 237–242, 313, 316–320, 327–330, 335, 340, 344–351.

The foregoing references to the opinion of the court, the report of the Master, exceptions thereto and rulings of the court thereon, and to the final decree and assignments of error, clearly present the questions arising thereon.

The alleged locations of general route are both radically defective in that they do not appear to extend beyond the state of Minnesota or to either the eastern or western *terminus* of the route prescribed in the charter. Neither of

them can be considered in any just sense as an exercise of the power conferred in its charter *so as to limit and conclude its choice.* The law required a map of the general route of the road — not of a part of the general route, but of the entire general route.

If the line first located was a valid one *pro tanto*, then the amendment was *unauthorized*, and no legal consequences could flow from making and filing it, as the power of the company was exhausted by making and filing the first one.

If the first line was valid so far as it extended, then the law at once operated on it and withdrew the lands as specified in it by force of the act.

Butz v. Northern Pacific Railroad, 119 U. S., 71, 72, 73.

Thereafter the line of general route could not be changed without the consent of congress.

Van Wyck v. Knevals, 106 U. S., 367.

The company had exhausted *pro tanto* its powers in that behalf.

Northern Pacific R. R. Co. v. Miller, 7 L. D., 100, 112.
Mason v. Railroad Co., 35 Barb., 374.
People v. Railroad Co., 45 id., 73.
Hud., Del. & Can. Co. v. Railroad Co., 9 Paige, 323.
State v. Turnpike Co., 10 Conn., 157.

It follows, therefore, that the complainant did not make any case entitling it to any decree as to the lands in Schedules "C" and "D," annexed thereto. It must be remembered that the certification of these lands to the state of Minnesota had the force and effect of a patent. 14 U. S. Stat., 97, sec. 3. And there is every presumption to be indulged in to support it. It is to be presumed that these lands were

certified to the state after proper selection as indemnity lands.

There is neither allegation nor proof tending in the least degree to impeach the certified list from the secretary of interior to the state, or the patent from the United States to the state for any of these lands, nor the patent from the state to the St. Paul & Pacific Company, and the bill concedes that these documents vested the legal title to these lands in the last named company.

The patents and certified lists are presumed to have been regularly and properly issued, nothing appearing on their face to show to the contrary, and they are conclusive evidence of title at law, and can only be impeached in chancery upon specific grounds to be alleged and proved. This is familiar law.

Minter v. Crommelin, 18 How., 87.

"The presumption is that the patent is valid and passed the legal title; and, furthermore, it is *prima facie* evidence of itself *that all the incipient steps had been regularly taken* before the title was perfected by the patent. It has been so held by this court in many instances, commencing with the case of *Polk v. Wendall*, 9 Cranch, 98, 99."

Bagnall v. Broderick, 13 Peters, 450.
Field v. Seabury, 19 How., 323, 332.
Hughes v. United States, 4 Wall., 232, 236.
Jackson v. Lawton, 10 Johns., 23.

2. There is nothing in this case to show that the complainant, prior to the issuing of the patent to the St. Paul & Pacific Company, ever acquired the right to select and have patented to it any lands within its secondary or indemnity limits, for want of its having prior to that time made and filed in the office of the commissioner of the general land office a *definite* location of the route — of the entire route of its road. For how else could it be known what amount of

lands the company was entitled to select from its original indemnity limits, or what from the secondary indemnity limits under the Joint Resolution of May 31, 1870, for "lands that have been *granted*, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of *subsequent* to the passage of the act of July 2, 1864" and prior to the *definite* location of its line of road.

Railroad Company v. Herring, 110 U. S., 27, 38–42.

This case is decisive on complainant's pretensions to defeat our title to any lands within our limits and its indemnity limits.

Not being within the place limits of the grant to the Northern Pacific Company, as to lands in indemnity limits, common to the two grants, priority of selection gives priority of right, but as to lands in our place limits, our right to them will prevail over any claim to the same lands by complainant for indemnity, though within the limits of the withdrawal of October 12, 1870, along the line of its general route.

Barney v. Winona & St. Peter R. R. Co., 117 U. S., 228, 232.

Certification is the equivalent of a patent and carries the same presumptions in its favor.

4. It does not appear that these lands in Exhibits "C" and "D" have been regularly selected by the Northern Pacific Company at any time, nor that such selections have been approved. Until approved, no title attaches to the lands, and there is no lawful segregation thereof from the general mass of lands in the indemnity limits.

Wisconsin Central R. R. Co. v. Price County, 133 U. S., 496.

Having shifted, by amendment, its line of general route about twenty-five miles further south, at the point of conflict, and then having fixed its alleged line of definite location nearly ——— —— miles further south, it is not competent for this company to claim all the earth by this method of amendment of line of general route and making its alleged definite location extend over still other territory.

The statutory withdrawal was only for lands within its probable place limits. Nothing was withdrawn for *indemnity* purposes. The withdrawal was wholly *provisional*, and upon location of the line of definite route it would be reduced accordingly. It could not be maintained along the line of definite location and also at the same time along the line of *general* route so as to bind lands not in the place limits of the definite location.

5. When the bill in this case was filed, as appears from the proofs, and from the statements in the answer of the Northern Pacific Company to the supplemental bill, *the line of its road* had not been "definitely fixed, and a plat thereof filed in the office of the commissioner of the general land office," as required by law.

It had not made a location of a *general* route, except through Minnesota to the Red River of the North. The proofs wholly fail to show any other location either original or amended. That which does not appear is to be taken as not existing.

The alleged *definite* location of its road upon which it relies consists of a map filed in the general land office of 228.2 miles of constructed road, not extending to either terminus. It is described in the document itself by the assistant chief engineer as a

"Railroad from Junction Minnesota to the Red River of the North, being for *Minnesota section* of 228.2 miles as shown by the line of route in connection with the lines of

the Pacific surveys on this map; that it has been completed and equipped as required by law, and that this line of route shows the correct location of the said railroad."

And the president and secretary certify that D. C. Lindsley, making oath to the foregoing statement, is the assistant chief engineer of the Northern Pacific Railroad; and

"That the location of the road as represented on this map is correct and approved by the company; and also *that the said portion of the said road* has been completed and equipped in all respects as required by law."

Now, until this *definite* location was completed from one terminus to the other, its power of location was not exhausted and it could change it as it chose. So, too, until the map of the route thus fixed was filed in the office of the commissioner of the general land office, as provided by section 3 of its charter:

"Until the map is filed . . . the company is at liberty to adopt such a route as it may deem best, after an examination of the ground has disclosed the feasibility and advantages of different lines. But when a *route* is adopted by the company, and a map designating it is filed, . . . *the route* is established; it is in the language of the act 'definitely fixed,' and cannot be the subject of future change so as to affect the grant, except upon legislative consent."

Van Wyck v. Knevals, 106 U. S., 366, 367.

The act which fixes the time of definite location, is the act of filing the map or plat of *the line of the road* in the office of the commissioner of the general land office. It is at that time, and not until then, that its title attaches to any particular tract of land.

"The necessity of having certainty in the act fixing this time is obvious. *Up to that time the right of the company to no definite section, or part of section, is fixed.* Until then many rights to the land along which the road finally runs may attach, *which will be paramount* to that of the company

building the road. After this no such rights can attach, because the right of the company becomes by that act vested. It is important, therefore, that this act fixing these rights shall be one which is open to inspection. At the same time it is an act to be done by the company. The company makes its own preliminary and final surveys by its own officers. It selects for itself the precise line on which the road is to be built, and is by law bound to report its action by filing its map with the commissioner, or, rather, in his office. The line is then fixed. The company cannot alter it so as to affect the rights of any other party. Of course, as soon as possible, the commissioner ought to send copies of this map to the registers and receivers through whose territory the line runs. But he may delay this, or neglect it for a long time, and parties may assert claims to some of these lands, originating after the company has done its duty — all it can do — by placing in an appropriate place, and among the public records, where the statute says it must place it, this map of definite location, by which the time of the vestiture of their rights is to be determined. We concede, then, that the filing of the map in the office of the commissioner is the act by which 'the line is definitely fixed' under the statute."

Kansas Pac. Co. v. Dunmeyer, 113 U. S., 634, 635.

The requirement of the statute is of "a map of the line of the road." This means and requires *a map of the entire line* from one terminus to the other. There is to be *but one filing and but one vesting of title.* And the act that vests the title gives rise to the right to select indemnity for lands not found in place. The vesting of title and the springing up of this right of selection are necessarily coincident.

In the case of *Cedar Rapids Railroad Company v. Herring*, 110 U. S., 27, 41, this precise question, *whether a map of part of the line* would satisfy or be in compliance with the statute, was resolved in the negative.

"The time when it became the duty of the land officers to suspend these sales was under the control of the company, for whenever they established and filed in the general land office a map '*definitely showing this modified line of*

their road,' the duty of the secretary arose, and not until then.

"This was not done until December 1, 1867, three years and a half after the passage of the act requiring it to be done, under which plaintiff's rights accrued. It is true, a map of part of the line was filed in 1865, but this can in no sense be said to be a map definitely showing the modified line of road. It showed only a part of it, and left the secretary in ignorance where the road would yet be carried to, and what quantity of land it would be entitled to when finished. IN ALL THESE CASES THE REQUIREMENT HAS BEEN OF A MAP OF THE LINE OF THE ROAD — OF THE WHOLE ROAD, NOT PART OF IT; A COMPLETE, NOT A PARTIAL MAP; A MAP DEFINITELY SHOWING THAT LINE, AS THE LANGUAGE CLEARLY MEANS.

"It was during this delay of three years and a half that the entries were made, under which defendants hold the land and acquired the legal title, except in the single instance, made January 4, 1868, before any action of the secretary could be had to withdraw the lands, and it was not until March 16, 1876, that any of the lands in controversy were selected by the company; an average of ten years after the rights of defendants had vested. We are of opinion that the defendants had the right to do this in regard to any but the odd sections within the six-mile limit; that there was no contract between the United States and the plaintiff which forbade it. *No rights existed in plaintiff to all these lands, or to any specific sections of them, during this period.* No obligation of the government to withdraw them from sale arose *until plaintiff filed a map, definitely showing the entire line of its road, in the general land office.* The defendants purchased from officers who had the power to sell. They acquired a valid title.

"If plaintiff was injured *it is by its own laches.* If there is no land to satisfy its demand, it is *because it delayed over three years to file its map to establish the line of its road*, and for years afterward to make selections."

And in the recent case of the *St. Paul Railroad Company v. The Winona Railroad Company*, 112 U. S., 731, it is said that the case of *Herring* was decided "*after much consideration.*"

No title or right whatever to any of the lands in question vested in the complainant under the terms of its grant, upon filing the document in question and called a map of definite location. Until this important provision of the grant was fulfilled by the Northern Pacific Company, every conceivable method by which the United States could dispose of its lands was to remain in full force and operation as to the lands which might fall within the limits on either side of the located line. The United States could reserve them for any other purpose, could sell them, it could grant them or otherwise appropriate them; the lands could be sold, preempted, or taken up by homestead settlers, except as provided in section 6 of the act. But the company had its compensation for all lands so lost in indemnity lands to be selected within the larger limits prescribed by the act. Nor is the provision for patenting lands in section 4 of the act, in any respect in conflict with this position. This provision must be construed with the granting clause, to which it is clearly subordinate.

The filing of a map of the entire route is as indispensable as that anything shall be done beyond a mere adoption of a line of location. Had it utterly failed to file any map at all, although it had constructed the entire road, the result must have been the same, and utterly fatal to the pretensions of the Northern Pacific Company. Congress has made the *filing* of a map of definite location the definite time when the grant can become attached to any lands.

The fact that a road has been built and put in operation on or over a part of a route does not preclude the company from abandoning it, and selecting another route for the same piece of road, and only renders it more or less improbable, according to the quantity built, that it will do so. It does not put an end to its *absolute* right to change, which is indispensable to a definite location. And since building and put-

ting a road in operation do not determine its right of location, and this can only be done by filing the map of definite location in the office of the commissioner of the general land office, and placing it beyond the power of the company to make alteration or change, except by consent of congress, it follows that until its power of location between the termini is exhausted, there can be no map filed of the route of the road from one terminus to the other; and until that is done, and while the power of location is not exhausted, there can be no definite location of the route. The route can be considered as definitely fixed only "when it has ceased to be the subject of change at the volition of the company" (106 U. S., 366); not when it has ceased to be *probable* that it will change it.

There must be some definite period or event fixed by law for vesting the title, and of necessity such a provision must be arbitrary and unyielding; not one thing to-day and another to-morrow. Nor one thing for one company and another thing for some other, according as companies may be circumstanced. And the fact must appear from the record in the proper office in order that the sale and disposition of the public lands may be proceeded with in a safe and orderly manner.

This objection, if sustained, is not only fatal to the complainant's bill, but it puts at rest all its pretensions of priority or paramount right within the conflicting limits.

IV.

The Complainant is Equitably Estopped from Asserting the Claim Set Out in Its Bill.

The complainant, the Northern Pacific Railroad Company, is estopped by its conduct from setting up any title or claim to any lands within the land limits of the St. Paul, Minne-

apolis & Manitoba Railway Company. As against the latter company, deriving its title through the $15,000,000 mortgage, its claim is wrongful and inequitable in the last degree, and upon all principles of integrity of action and fair dealing its claim ought not to be allowed to prevail in a court of equity.

The claim of the complainant as to the construction of the act of March 3, 1871, so plainly unjust and inequitable, is quite tolerable in comparison with the claim of title it sets up against the St. Paul, Minneapolis & Manitoba Company, deriving its title as aforesaid and vested with the equities of the purchasers of the $15,000,000 issue of bonds of the St. Paul & Pacific Company, First Division, secured by a mortgage or trust deed on the property and land grant of the St. Paul & Pacific Company appertaining to the branch, so located as aforesaid from St. Cloud to St. Vincent.

The parties to this exchange of lands were the United States, the Northern Pacific Company and the St. Paul & Pacific Company. It came to the latter company in the form of an offer of exchange at its *option*, offered by the United States, and we may truly say by the Northern Pacific Company. Congress had a right at the time to modify or change or repeal its grant, it having built no road.

After the Northern Pacific Company had become the real owner and practically the sole stockholder of both the other companies, and had through the election of its own directors as directors of such other companies subjected the franchises, interests, policy and business of those companies to its own will, and so completely subordinated all their powers and purposes to its own, that they became mere agencies of the Northern Pacific to subserve its views, purposes and interests; in order to carry these out more completely, the issue of the bonds for $15,000,000 and the exe-

cution of the trust deed or mortgage on the land grant took place.

Before this mortgage was issued, the Northern Pacific Company had acquired the entire stock of the St. Paul & Pacific Company, and all of the stock of the First Division Company, except three hundred and fifty shares pertaining to its branch line from St. Anthony to Watab, and this latter was a very small proportion of its stock. P. Rec., 485, 469, 470, 474, 524; Ex. "O–^{2}."

Mr. Moorhead was in *form* contractor for building the branch to St. Vincent, but *in fact* simply in trust for the Northern Pacific Company, and he managed the negotiation and sale of these bonds through Mr. Willmar to parties at Amsterdam. P. Rec., 474, 524; Ex. "O–^{2}," 481, 482. The amount of land covered by the grant for the St. Vincent branch was figured upon the basis of giving the St. Paul & Pacific Company a full grant, conceding to it priority over the Northern Pacific, to facilitate and secure the desired loan. This was fixed up with Gov. Smith, president of the Northern Pacific Company, Gen. Cass, vice-president, and Mr. Moorhead — all of them its directors. The amount was estimated at ten sections per mile, and stated on the face of each of the bonds, and carried into the trust deed or mortgage by incorporating in it a copy of the bonds. The statement was: "*First mortgage bond upon three hundred and forty-eight miles of railroad, and* TWO MILLION TWO HUNDRED AND SEVENTEEN THOUSAND ACRES OF LAND." St., fols. 183–200, and references there made. This was the statement of the quantity of lands *embraced in the grant* which was described in the trust deed in very general terms; the law fixing the limits within which the lands were situated.

The Northern Pacific Company passed the resolutions (P. Rec., 524, 525) providing for a committee "to carry

forward and perfect the negotiations for the sale and delivery of these bonds, and to apply the proceeds of said sale to the construction of the roads, according to existing agreements." For these agreements, see P. Rec., 525.

The committee appointed was Mr. Moorhead, chairman, the president, and vice-president, Mr. Cass and Mr. Felton. The formal action of the St. Paul & Pacific Company is found in defendants' evidence, P. Rec., 518. The agreements referred to are found in defendants' evidence, P. Rec., 390, 402; Exhibits 45 and 46. The sale of the bonds under this arrangement commenced in May, 1871, and continued until default was made in the payment of the interest on those first negotiated, which was in the fall of 1872. The work was then suspended, because no more money could be got, a very great part of that already obtained having been misapplied through the control and action of the Northern Pacific Company, and in completing the main line of the First Division Company to Breckenridge. The Northern Pacific Company refusing to advance any money to prevent a default in the payment of accrued interest, the St. Paul & Pacific Company became insolvent and suspended work, and its property soon after went into the hands of a receiver. About $10,700,000 of the bonds were sold. Of the proceeds about $3,300,000 were used for the purposes for which the bonds were issued,— the building of the branch lines. "The balance has been used in other ways; about $1,500,000 went to complete the main line of the First Division Company; about $1,000,000 for payment of interest coupons on the main and branch lines of the First Division Company; $500,000 were used for commissions and expenses of the firm negotiating them, in round numbers. The proceeds of the balance, I suppose, was reserved by Lippman, Rosenthal & Co., to pay the first three years' interest on the bonds which were sold." P. Rec., 395.

The amount so misappropriated through the action of the Northern Pacific Company, it will be seen, was $2,500,000.

This misappropriation was a gross and palpable piece of dishonesty.

It caused the insolvency of the St. Paul & Pacific Company, and put an end for the time being to its enterprise of building its line from St. Cloud to St. Vincent.

When the consequences of this dishonest and fraudulent course of dealing became apparent the complainant next essayed another equally dishonest course, namely, to wrest from the bondholders one-fourth of the very security upon the faith of which the bonds were sold, by attempting to falsify the assurance it was active in making, contained on the face of the bonds and trust deed, as to the quantity of land within the limits of the grant to the St. Paul & Pacific Company, bound for the payment of the bonds. This amount is two million two hundred and seventeen thousand acres; and it appears that should the defendants hold every acre within the conflicting limits of the grants it will not get its full quota.

The complainant now seeks to falsify this most important and solemn assurance to the extent of over five hundred thousand acres of land.

If the quantity of land and amount involved were within the limit of what is ordinarily in question in suits between man and man, no one could hesitate for a moment to say that the complainant would be clearly estopped from insisting upon such an unconscientious and dishonest claim. And such it seems would be the result here. The subject is not too vast to be governed and controlled by those principles of good faith and common honesty which have hitherto been enforced by courts in relation to human affairs.

The question is, shall the court now permit the complain-

ant to falsify the representations it was so active in making in order to promote its own interests, for the loan was *practically for its benefit*, as it recites in the resolution of its board, May 10, 1871, that "this corporation is practically the owner of the St. Paul & Pacific and the St. Paul & Pacific, First Division, and their properties and estates, through an ownership of the share capital of those companies, and with a view to protect and promote these interests, therefore, resolved," etc., etc. The outward form and husk was labeled with the name of the two corporations, but the inward kernel was the Northern Pacific Company, its officers in a majority in both the other boards, pulling the wires and engineering the scheme "with a view to protect and promote" its own interests, held as aforesaid.

This is not the mere case that sometimes arises where different corporations have officers in common, or where the personality of the directory of the one in a greater or less degree is identical with the personality of the directory of the other. This is far different.

Here is a case, where the *real beneficial* ownership is in only one of the corporations, the Northern Pacific Company, where the other corporations, which can act only through the medium of officers and agents, are mere puppets in its hands, the wires being manipulated in fact by its own officers, acting as officers and agents for the two corporations and the Northern Pacific Company as well, "and with a view to protect and promote" its interests, as it declares on the record of its own proceedings.

Mr. Moorhead, the chairman of the aforesaid committee appointed by the Northern Pacific Company, was one of its directors, and the one who, through Willmar, negotiated the sale of these bonds; in doing this he was executing the trust confided to his committee,

"To carry forward and perfect the negotiation of the bonds of the St. Paul & Pacific Railroad Company, and to apply

the proceeds of said sale to the construction of the roads according to existing agreements, and shall report their proceedings monthly to the board."

The question is, who really and in fact put forth these representations and caused them to be acted upon as true; and for whose profit and advantage was this great wrong committed.

The appellant, the St. Paul, Minneapolis & Manitoba Co., vested with the equities of the wronged bondholders, is before the court, objecting to the equities set up by complainant.

The court will look beyond the mere matter of *form* and deal with the *substance* of the transaction. A suspicious and slippery confusion of formal corporate and actual relations, duties and responsibilities appears all through this transaction, and an attempted separation of such identity and liability for the consequences of these representations ought not to be recognized or receive judicial indorsement. *Mihills Manuf. Co. v. Camp, Trustee*, 49 Wis., 130, 137, 149, 150.

An equitable estoppel arises where one induces another to change his position for the worse by a representation or assurance made by the former. He shall in such case be compelled to make the declaration good. *Wheelton v. Hardisty*, 8 Ellis & Black, 231, 262. And it binds the party and those in privity with him. Bigelow on Estoppel, 473. It is a doctrine of equity that if a representation is made to another who deals upon the faith of it, the former shall make the representation good, if he knew it to be false.

Graves v. Bigelow, 6 Vesey, 174, 182.
Slim v. Croucher, 1 De Gex, F. & J., 518, 522, 524.
Dickerson v. Colegrove, 100 U. S., 580.

These statements were intended to influence the conduct of parties with whom the Northern Pacific Company were *in fact* dealing, but *in form* through others, and it actually

misled them into a line of conduct which must be prejudicial to their interests, unless such party be cut off from the power of retracting. *Delzell v. Odell*, 3 Hill, 315.

It will not do to say that the representations were a mere matter of opinion. It was as to a fact, namely, the number of acres of land within the limits of the grant of the St. Paul & Pacific Company, and this is as clearly a matter of fact as it would be for one to represent that his farm, which he is about to mortgage by general description or metes and bounds, contains a specified number of acres. It was as to a fact which the corporation making it was properly to be supposed cognizant, to wit: the extent and amount of the grant and the *locality* within which it was operative. It was not a mere statement of opinion as to the number of acres of land that *would inure* to the company under its grant. It was a statement as to the number of acres that *had inured* to it, and was subject to, or covered by, the trust deed.

See also recitals in the trust deed or mortgage as to the location of the line. St., fols. 188–190, 178–202, 222–223, 264–274.

It will not do for the complainant to say that it did not make these representations in the sense that it is not responsible for their truth. In *fact* it did make them, though in *form* they came from another corporation owned and controlled by it.

Nor will it do to say that, if it had made them over its corporate seal, it would not be answerable for their truth. Corporations possess the power to do wrong, and we have very high authority, indeed, for the proposition that:

> "The doctrine of *ultra vires*, when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong."
>
> *Railway Co. v. McCarty*, 96 U. S., 267, and cases there cited.

And when the wrong is done in promotion of its own interests, by its own committee and agents, as in this case, it would seem that there could be no question but that the corporation would be bound by the representations. "It is a well settled principle of the law that the doctrine of equitable estoppel, or estoppel *in pais*, by which one who represents to another the existence of a certain state of facts, and thereby induces him to act upon the faith of their existence, is concluded or estopped from afterwards denying the truth thereof against the person so acting on the faith of the same, when such denial will result in the injury of the person so confiding in such representations, *is as applicable to railroad corporations and other corporate bodies as to natural persons.*" 1 Rorer on Railroads, 651, and cases cited.

Zabriskie v. Railroad Co., 23 How., 397, 398.
Pendleton Co. v. Amy, 13 Wall., 297, 305.
Randolph Co. v. Post, 93 U. S., 502, 513.

And the plea of *ultra vires* will not avail it as an answer to the estoppel.

Railway Co. v. McCarty, 96 U. S., 258.
Vicksburg Railroad Co. v. Ragsdale, 54 Miss., 200, 215, 217.
Bissell v. Railroad Co., 22 N. Y., 258.
Buffet v. Railroad Co., 40 N. Y., 168.
Milnor v. Railroad, 53 N. Y., 363.
Railroad v. Pratt, 22 Wall., 123.

In order to create an equitable estoppel it is essential:

First. That there has been a representation of material facts.

Second. The representation must have been made with a knowledge of the facts.

Third. The party to whom it was made must have been ignorant of the truth.

Fourth. It must have been made with the *intention* that the other party should act on it.

Fifth. The other party must have been induced to act on it. Bigelow on Estoppel, 489 *et seq.*

1. Enough has been said to show that the representations were made *in fact*, though not *in form*, by the complainant, and in order and "with a view to protect and promote its interests." And Moorhead, the chairman of its committee, negotiated these bonds, through Willmar, at Amsterdam. That the representations were material no one can doubt, and that they were made, is clear. There is no other way by which a corporation could make such representations, except by its officers and agents acting in, and in order to subserve, its interests.

But such an estoppel may also arise as well from *passive* as *active* conduct. And this is well put by Lord Denman in *Gregg v. Wells*, 10 Ad. & Ellis, 90: "A party who negligently or culpably *stands by* and allows another to contract, on the faith and understanding of a fact which he *can contradict*, cannot afterwards dispute that fact in an action against the person whom he has himself assisted in deceiving." And so, too, in *Chapman v. Chapman*, 59 Pa. St., 214, where it said that:

"Silence will postpone a title when one should speak out, when, knowing his own right, one suffers his silence to lull to rest, instead of warning to danger; when, to use the language of the books, silence becomes a fraud. Such a silence, though negative in form, is operative in effect, and becomes suggestive in the seeming security it leads to. He who is led by such a silence ignorantly or innocently to rest upon his title, believing it to be secure, and to expend money and make improvements upon his property without the timely warning he should have had to dispel his illusion, will be protected by estoppel against recovery."

Storrs v. Barker, 6 Johns. Ch., 166, 169–176.
Niven v. Belknap, 2 Johns., 573.

In the latter case THOMPSON, J., says:

"Though it does not appear positively from this testimony that Belknap took *any active agency in the negotiation*, yet his presence and his *silence* are equally efficacious and binding upon him if the complainant was thereby misled and deceived. There is an implied as well as an express assent; as where a man who has a title and knows it, stands by and either encourages or *does not forbid the purchase*, he, and all claiming under him, shall be bound by such purchase. It is very justly and forcibly observed by a writer on this subject, that there is a negative fraud in imposing a false apprehension on another by silence, where silence is treacherously oppressive. In equity, therefore, where a man has been silent when in conscience he ought to have spoken, he shall be debarred from speaking when conscience requires him to be silent."

"'Standing by' does not necessarily imply actual presence, but will exist for all the purposes of an estoppel when there is such knowledge of the sale and attendant circumstances as makes it a duty to warn the purchaser."

2 Smith's Lead. Cas., Pt. 2, 859.
State v. Holloway, 8 Blackf., 45.
Gatling v. Rodman, 6 Ind., 289.
Richardson v. Chickering, 41 Ind., 380, 386.

2. The complainant is conclusively presumed to have known its grant and all material facts in relation to it as well as the grants to the St. Paul & Pacific Company, of which it was sole stockholder, and all of whose directors save one were directors of the complainant company. And a claim of ignorance in this behalf would be the result of gross negligence and have the same effect as actual knowledge.

Bigelow on Estoppel, 540, 545, 546.
Adams v. Brown, 16 Ohio St., 75.

3. The parties to whom the representations were made were residents in Holland, and had no knowledge of the fact whether the quantity of land represented in the bonds, and also in the trust deed, had inured to the company so as

to be bound by the trust deed. The sole object of making the representation was to afford them that information which from the nature of the case it was not reasonable to suppose the parties in Holland had, and it was made with the intent that they should rely and act on it.

"Wherever a sale is made of property not present, but at a remote distance, which the seller knows that the purchaser has never seen, but which he buys upon the representation of the seller, relying on its truth, then the representation in effect amounts to a warranty; at least the seller is bound to make good the representation." *Smith v. Richards*, 13 Peters, 26, 36–42.

This principle is as plainly applicable to representations made in order to procure the sale of bonds secured by a trust deed. It cannot now be urged that the purchasers of these bonds in the market in Amsterdam had eyes and ears and understanding, and should have investigated this matter for themselves. *Miner v. Medbury*, 6 Wis. 317.

4. That it was fraudulently made is entirely plain; in the sense of the rule, which is stated to be, that:

"The element of fraud is essential either in the intention of the party estopped, *or in the effect of the* evidence which he sets up." *Brant v. Coal & Iron Co.*, 93 U. S., 336.

Under these circumstances, the making of such a statement and being instrumental in its use to raise money is evidence of a fraudulent intention or negligence so gross as to amount to fraud. *Miner v. Medbury*, 6 Wis., 316, 317.

Wilfully means, in the statement of the rule, as to making the representations, no more than *voluntarily*.

Freeman v. Cooke, 2 Exch., 654.
In re Bahia, etc., L. R., 3 Q. B., 584.

It is not necessary to an equitable estoppel that the party should intend to mislead. If his act was calculated to mislead and actually has misled another acting upon it in good faith and exercising reasonable care and diligence under all

the circumstances, that is enough. *Bank v. Hazard*, 30 N. Y., 230.

5. That the purchasers of the bonds did act on the faith of these statements, as it was designed they should, and changed their position on account of them, can admit of no doubt. The nature of the representations, and what followed upon their being made, establishes this branch of the case.

Upon every material point the equitable estoppel relied on is fairly made out, and it only remains to apply well-established principles of honesty and business integrity in order to dispose of the complainant's pretensions.

V.

The Supplemental Bill.

The supplemental bill is not a separate bill, although process of subpœna was issued on filing it and served on the complainant in the original suit. "The supplemental bill is a mere adjunct to the original bill."

Shaw v. Bill, 95 U. S., 4.

And a supplemental bill filed in a case like this, by a purchaser, *pendente lite*, is also called a bill in the nature of a cross-bill.

Sedgewick v. Cleveland, 7 Paige, 287.
Whitlock v. Edgar, 2 Barb. Ch., 106.

Where there is a transfer of interest, *pendente lite*, a supplemental bill may be filed by or against the purchaser.

Hoxie v. Carr, 1 Sumn., 173, 177, 178.
Winter v. Ludlow, 3 Philad., 464, 468–470.
Metcalfe v. Pulvertoft, 2 Ves. & Beames, 200.
Foster v. Deacon, 6 Mad., 59.

Watt v. Crawford, 11 Paige, 470.
Livingston v. Freeland, 3 Barb. Ch., 510, 524.
Binks v. Binks, 2 Bligh. P. C., 593.

The distinction between a supplemental bill and an original bill in the nature of a supplemental bill is stated in Story's Eq. Pl., §§ 345, 336–339. Mr. Cooper, in his work, treats them under one head (Cooper Eq. Pl., 62), and although LORD REDESDALE has made a formal division of them, yet, in discussing them, he has mixed the cases together without any attempt to arrange them under separate heads.

Russell v. Sharpe, 1 Ves. & B., 500.
Randall v. Munford, 18 Vesey, 424.

Rules 57, 58, of equity practice seems to regard them as substantially alike for all practical purposes.

Such a bill, although supplemental as to the former parties, is original as to the new party.

Winter v. Ludlow, 3 Philad., 468–470.
Chase v. Searles, 45 N. H., 511, 521.

And where such bill states matter which is not in fact supplemental, the remedy of the defendant is by demurrer, plea or answer. It will be too late to take objection at the hearing.

Story Eq. Pl., § 338*a*; 2 Danl. Ch., 1535.
Fulton Bank v. Canal Co., 4 Paige, 127, 131.
Bowyer v. Bright, 13 Price, 316.

The mode of getting *new* matter before the court is a matter of *form merely*, and the defendant, if it wished to object to the form, should object *in limine*, and not have waited until after proofs were taken and the cause came to final hearing.

The object of the original suit is to obtain a construction of the respective grants under which these parties claim, and to settle and determine their rights within the conflicting limits of the grants, and the matter brought forward by the supplemental bill in the nature of a cross-bill is a part of the controversy, and the entire matter should, if possible, be disposed of by one decree.

"The question is not whether the proceeding is supplemental or ancillary, or is independent and original in the sense of the rules of equity pleading; but whether it is supplemental and ancillary, or is to be considered as entirely new and original in the sense which this court has sanctioned with reference to the line which divides the jurisdiction of the federal court from that of the state courts."

Minnesota Co. v. St. Paul Co., 2 Wall., 609, 633.

The subject matter and amount in controversy, being such as to give the court jurisdiction, and the defendant having appeared and answered, and so submitted to the jurisdiction of the court, it is now too late to make any objection *as to matters of form of procedure merely*, and the court will proceed to a decree upon the whole controversy thus presented.

Peck v. School Dist., 21 Wis., 521, 522.
Truscott v. King, 6 N. Y., 165.
Le Roy v. Platt, 4 Paige, 77.
Grandin v. Le Roy, 2 Paige, 509.

The lands claimed by the supplemental bill, amounting to about thirty-four thousand acres, are within the place limits of the grant of the St. Paul & Pacific Company, near the intersection or crossing of the respective lines of the roads of the two companies.

About sixteen thousand seven hundred acres of them are

in the amended withdrawal of October 12, 1870, along the line of general route, as shown by the answer of the Northern Pacific Company to the supplemental bill in the nature of a cross bill, but were not within the original withdrawal, where they are particularly described. Orig. Rec., 397. The list claimed by that bill is found in Orig. Rec. 351, 352.

The withdrawal—the amended withdrawal of these last lands was not authorized.

We claim we are entitled to a decree for the lands in our place limits described in the supplemental bill, upon the same grounds upon which we resist the relief sought by the original bill.

Recapitulation.

Our positions in support of the priority of our grant are, in brief, in substance:

I. That complainant's grant is one by specific description, and it does not include any lands to which, at the time the line of its road was "definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office," the United States *then* had not *full title;* that the act defines what shall be a want of full title, namely, lands "reserved, sold, granted or otherwise appropriated, not free from pre-emption or other claims or rights," at that date, which was November 21, 1871. That as to lands within the descriptive terms of its grant, the rule of relation does not apply, and it cannot affect lands within the above category; that the effect of filing a map of the line of general route under the act of July 2, 1864, did not vest any right, either legal or equitable, in or to any of the lands in question in the Northern Pacific Company, and that its grant could attach to lands only in the event and to the extent limited by section 3 of its grant, as modified by sec-

tion 6. That whether the line of definite location of defendants' road was filed before or after that of the complainant, the title of the defendants, under the acts of March 3, 1857, and March 3, 1865, relates to the date of its granting act or acts, and cuts off all claim on the part of the complainants to lands in our granted limits, or to lands in our indemnity limits as well. Because on filing our line of definite location (three days before complainants was filed) it became and was the duty of the Secretary of the Interior to "indicate" the lands within the increase of our grant, and "to withdraw from market the lands embraced within the provisions of this act." Act March 3, 1865, secs. 1 and 7. Mere delay in approving our location or making such withdrawal could not prejudice our rights, as the doctrine of relation applies, and the lands within twenty miles on each side of our line of location under the act of March 3, 1871, were thus placed *sub judice* and taken out of the category of public lands. *Ante*, pp. 91–115.

Ryan v. Railroad Co., 99 U. S., 382, 387–389.
Shepley v. Cowan, 91 U. S., 330, 337.
Newhall v. Sanger, 92 U. S., 761.

II. The grant of March 3, 1857, is beyond question, paramount in the region of conflict to the complainant's grant, and was by the terms of the latter grant excluded from it, and through all the changes of congressional legislation by the Joint Resolution of July 12, 1862, the act of March 3, 1865, increasing our grant and restoring the original *status*, with right of location (see secs. 7 and 9), and by the act of March 3, 1871, has remained in full force, and has never been resumed by the United States or relinquished. From a time long anterior to the location of the line of general route of complainant, down to its definite location, our grant has existed in some form or condition

across the entire limits of complainant's grant, and was excluded by its terms from its operation. And these lands, by the priority of filing our map of definite location over that of complainant, were appropriated to the satisfaction of our grant, before complainant's grant had attached to any lands whatever.

III. The act of March 3, 1865, containing no words of present grant, was intended to increase the grant of March 3, 1857, as of the date of the former act, as an amendment of it. It restored the *status* of affairs as it existed before the Joint Resolution of 1862, as to the St. Vincent line, with a right of location beyond Crow Wing, at least, that being a point beyond which no survey or location had been made or filed; that whether this increase dates or ranks as of the date of the act of March 3, 1857, is not material, for if the increase of the grant is to date from and as of the date of March 3, 1865, still as a grant it has priority over the complainant's grant, and the title under the grant as thus increased, or the grants as thus made when definitely located, relates to the date of the first, March 3, 1857, or in part to that date, and as to the extension or increase to March 3, 1865, and so in any event is prior to complainant's grant; the latter becoming effective only on definite location; and that the lands in question are in no sense any part of the lands upon which it was intended that complainant's grant should operate. It has, therefore, failed to show any equity to disturb the legal title to them which the bill concedes the St. Paul & Pacific Company acquired. If the act of March 3, 1871, created a *new* grant in the region of conflict instead of providing for the location of the old grant by existing laws, still as the withdrawal of Oct. 12, 1870, could lawfully extend only to sales, entries and pre-emptions, there was nothing to prevent it from having a prior operation on the lands

in question, the definite location of the defendants' line having been filed before complainant's. *Ante*, pp. 115–131.

IV. The act of March 3, 1871, does not make a new grant; it provides for a relocation in part, and in part an original location of an existing grant. The title of the St. Paul & Pacific Company along the altered lines relates to and has its origin in the acts of March 3, 1857, and March 3, 1865, and overreaches the complainant's grant.

1. It was the intention of congress, in view of state legislation and the history and condition of the respective enterprises, that such should be the result; that it should have the same force and effect, and the St. Paul & Pacific Company should have the same rights in the new region it had in the old by existing laws. *Ante*, pp. 133–146–174.

2. That the complainant is entitled by its grant for indemnity for all it might lose by such construction and application of the act of March 3, 1871, and particularly under the Joint Resolution of May 31, 1870, the complainant was entitled, "in the event of there not being in any state or territory in which the main line or branch may be located, *at the time of the final location* thereof, the amount of lands per mile granted by congress," . . . then to make up such deficiency it had a right to select from increased indemnity limits on each side of the original limits, other lands to make up for lands excepted in the original act of July 2, 1864, "to the amount of the lands *that have been granted* sold, reserved, occupied by homestead settlers, pre-empted,' or otherwise disposed of, *subsequent* to the passage of the act of July 2, 1864." By the decree in this cause, Schedule "D" annexed thereto, the complainant had such right of indemnity adjudged to it, and it wants the lands as well. *Broder v. Water Co.*, 101 U. S., 276, 277, shows the principles of construction applicable to this branch of the case.

3. That the statutory withdrawal under the sixth section

of the act of July 2, 1864, could not be enlarged or extended by any act of the land department so as to defeat the manifest policy or intention of congress and so intercept or defeat our grant. *Ante*, pp. 167–174.

4. That the act of March 3, 1871, was based on the state acts of February 6, 1864, and March 2, 1865, and the location known as the "Shepard" line, and was designed to approve it and to allow a certain part of the south end of it to be swung down to St. Cloud, as held by the supreme court of Minnesota. *Ante*, pp. 139–141, 151, 152.

5. That this matter of relocating the existing grant is one entirely between the United States and the state of Minnesota and Railroad Company, and in relation to which the complainant occupied no position giving it a right to complain. *Ante*, pp. 147, 152.

6. That the complainant was a party in procuring the act of March 3, 1871, providing for an exchange of lands along existing lines to the new ones, and is estopped by reason of the advantages to it, and its agency in procuring the passage of this act and the location made under it, from complaining of it and from claiming the lands in the new region, after getting the lands relinquished as a consideration for the exchange. *Ante*, pp. 164, 165.

7. The legislation of Minnesota was in accord with the new act of March 3, 1871, and the map of location and resolutions filed with it were valid releases, and if not, the subsequent releases in technical form, as well as the act of March 3, 1873, approving the location, related back to the date of the original acts and made the location valid as against all claims of the complainant. *Ante*, pp. 147–152.

8. The Minneapolis & St. Cloud Railway Company did not obtain any right or interest which prevented the full operation of the act of March 3, 1871. *Ante*, pp. 154–157.

9. That no lands were reserved or excepted out of de-

fendants' grant for complainant. *Ante*, pp. 144–147, 127, 131.

10. That neither the original or amended withdrawal along complainant's line of general route were of any force or effect as against the defendants' rights, and the defendants having priority of definite location, have priority of right. *Ante*, pp. 131–167.

V. That the alleged withdrawal of October 16, 1870, was one existing only by force of the statute and not by reason of any supposed authority of the commissioner of the general land office, and did not, nor did any of the reservations in the acts of March 3, 1857, March 3, 1865, when taken in connection with the act of March 3, 1871, operate to withdraw any of the lands in question from the operation of the grant to the St. Paul & Pacific Company, for the benefit of the grant to the complainant. *Ante* pp. 167–183.

1. Because no location of the *entire* general route has been shown.

2. That no sufficient proof was produced to establish either the location of the alleged general route filed August 15, 1870, or the amendment thereof, if amendable at the mere volition of the complainant, October 16, 1870; nor to establish any definite location of the line or route of complainant's road, such as was required to satisfy the requirements of the third section of its granting act, and the complainant has therefore failed to make out any title.

3. Because the withdrawal, if valid, was a statutory one and limited in its character, and excluding the right of the commissioner to make a more comprehensive one by executive order, and was such *sub modo* only.

4. The withdrawal by the commissioner was unauthorized and was merely notice of what the law had effected, and if valid in the language in which it is couched, "from sale, pre-emption, homestead *and other disposal*," it was designed

only to exclude the operation of the general land laws and was directed only to the officers executing them.

5. It was not a withdrawal like that in the Des Moines River Case, which withdrew or appropriated lands for the satisfaction of a grant, and which had been placed *sub judice*, by reason of a claim of existing grant.

6. The provision for withdrawal in section 6 is subordinate to the provisions of section 3, wherein it is expressly nominated that the right of the United States to make grants within the *float* prescribed (by act of congress) without breach or imputation of bad faith, to carry out *public* purposes, should continue; and this withdrawal did not give the company any claim to any specific tract of land, and was not, as complainant in substance seeks to make it, *the equivalent of definite location* under section 3.

7. The court erred for these reasons in decreeing to the complainant the lands described in Schedules C and D annexed to the decree. *Ante*, pp. 175–183.

VI. That the complainant, by reason of its acts and doings and the facts hereinbefore stated, should be held estopped from insisting on the claim made by its bill. *Ante* p. 183 *et seq.*

VII. The defendant, the St. Paul, Minneapolis & Manitoba Co., is entitled to the relief prayed in and by its supplemental bill in the nature of a cross-bill and the decree herein should be reversed and complainant's bill dismissed.

S. U. PINNEY,

Of Counsel for St. Paul, Minneapolis & Manitoba Co.

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S. U. PINNEY,

Of Counsel for St. Paul, Minneapolis & Manitoba Co.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890. (No. 54.)

THE ST. PAUL & PACIFIC RAILROAD COMPANY *et al.*, *Appellants*,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, *Appellee*.
} ORIGINAL BILL.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellant*,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, *Appellee*.
} SUPPLEMENTAL BILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Brief and Argument for Appellants.

GEO. B. YOUNG,
Of Counsel for Appellants.

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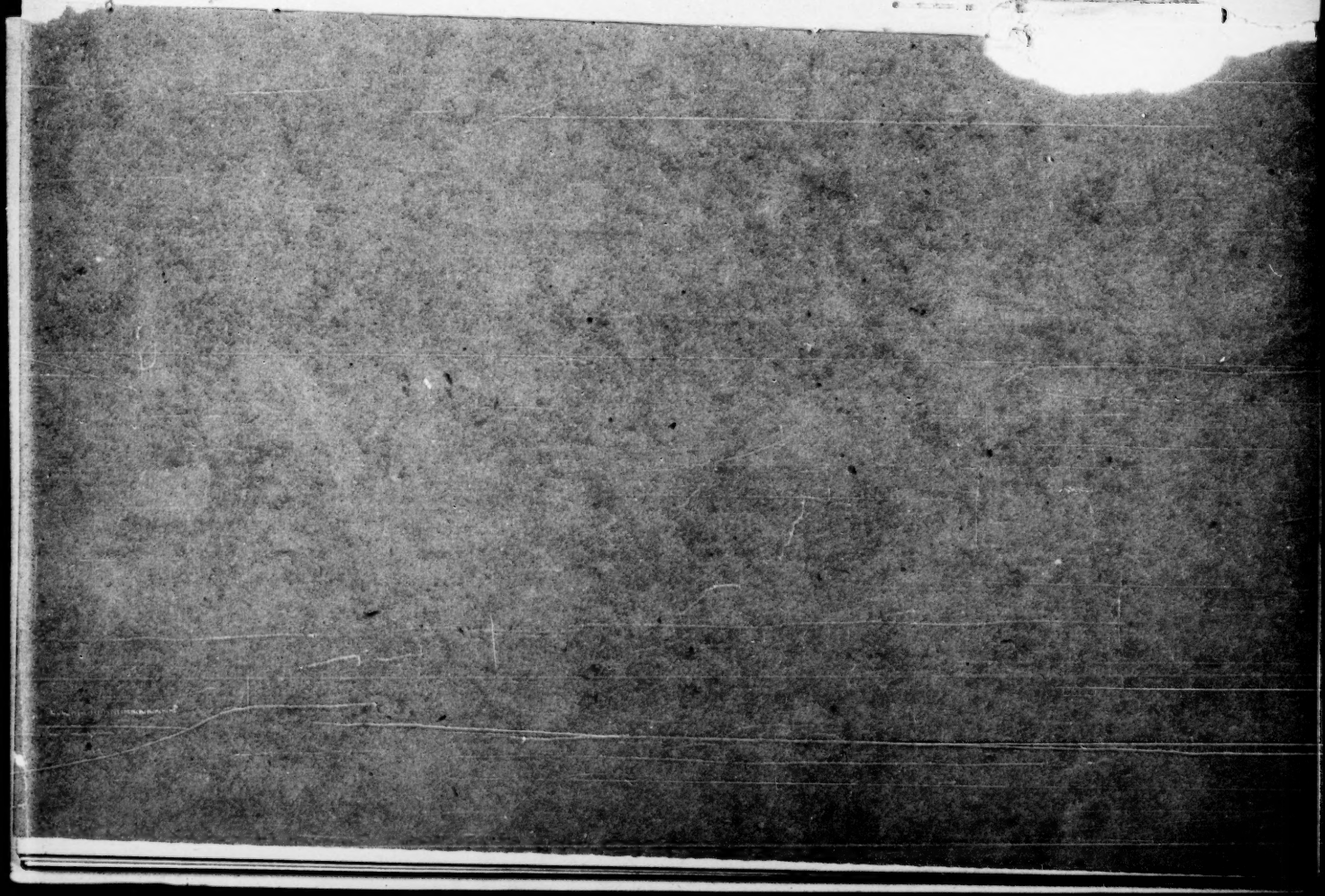

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BRIEF AND ARGUMENT FOR THE APPELLANTS.

The original bill in this cause was filed by the Northern Pacific Railroad Company to establish its right to about 500,000 acres of land in odd-numbered sections, situate in the neighborhood of Glyndon, in Minnesota, at which place the line of the Northern Pacific Co. and the St. Vincent Branch (or St. Vincent Extension) of the St. Paul & Pacific Railroad cross each other.

The lands are all within the 40 mile limits of the grant to the Northern Pacific Company, (if the location of the "Minnesota Division" of that company's railroad is a sufficient location,) and are also within the 20 mile limits of the St. Vincent Branch or Extension of the St. Paul & Pacific railroad, and are at various distances from the line of each company.

Nearly all the lands lie along that part of the line of the St. Vincent Extension which extends from a point in Section 35, Town 138, Range 46, (about 12 miles south of Glyndon,) to a point in Section 7, Town 154, Range 47, (92 miles north of Glyndon,) a distance of 104 miles.

A small part of them (between the 10 and 20 mile limits of the St. Vincent Extension) lie more to the southeast, and are along that part of the St. Vincent line which is between Ranges 32 and 46.

All the lands were certified to the state of Minnesota as passing under the congressional grants in aid of the St. Vincent Extension, and were patented by the United States to the state on January 14, 1875.

After the filing of the original bill, and on February 22, 1877, the lands thus patented to the state were conveyed by the state to the St. Paul & Pacific Company.

At the time of the location of the St. Vincent Extension,

(in 1871,) and at the time of the construction of that part of it extending from St. Cloud to Melrose and from a point 12 miles south, to a point 92 miles north, of Glyndon, (and by which construction the lands were earned by the St. Paul & Pacific Company,) and down to and at the time of the filing of the original bill, the Northern Pacific Company was owner of all of the stock of the St. Paul & Pacific Company, kept the offices and directory of that company filled with persons of its own choosing—its own directors; directed and entirely controlled every action of the St. Paul & Pacific Company —in brief, *was* the St. Paul & Pacific Company.

Naturally, the St. Paul & Pacific Company made no defence to the original bill. The trustees of a mortgage of $15,000,000, made by the St. Paul & Pacific Company upon the line, land-grant and franchises of its St. Vincent Extension, did, however, appear and defend on behalf of the mortgage bondholders, and those trustees are still defendants of record, although the mortgage was foreclosed by suit in the U. S. circuit court for Minnesota, and in June, 1879, all the mortgaged property was sold under decree of that court (entered April 11, 1879,) to the St. Paul, Minneapolis & Manitoba Railway Co., and a proper conveyance made, which sale and conveyance were on June 21, 1879, duly confirmed.

This last company, (hereafter styled, for brevity, the Manitoba Co.,) having become invested with all the rights, legal and equitable, of the St. Paul & Pacific Company and its mortgage trustees and bondholders to these lands, is the real party in interest in defending against the original bill.

Besides the lands involved in the original bill, and which were patented to the state, other lands in odd sections, to the amount of about 30,000 acres, were in part patented to the Northern Pacific Co. as enuring to it under its land-grant, and in part withheld by the interior department from either company. All these lands lie along that part of the St. Vin-

cent Extension between a point 12 miles south, and a point 92 miles north, of Glyndon, and all of them are within the ten mile limits of that line.

Certain of these lands, which have been patented to the Northern Pacific Co., form the subject-matter of a supplemental bill, filed in 1884 by the Manitoba Co., to establish its right to them under the land-grant to the state.

The lands claimed by the Northern Pacific Co., in its original bill, and by the Manitoba Co. in its supplemental bill, fall naturally into several classes according as they are in the 10 or the 20 mile limits of the St. Vincent Extension grant, and within the 20, 30, or 40 mile limits of the Northern Pacific grant, and according as they are lands in place or lands to be selected.

When directing an interlocutory decree the circuit court held that the Northern Pacific Co. was entitled to recover

1. All the lands within its place limits.

2. All the lands outside its place limits and within either of its indemnity belts, and within the limits of a withdrawal made October 12, 1870. Record, 185 (419.)

The master reported, among other things, as follows:

1. "Schedule B. List of lands, mentioned in schedule A of lands annexed to complaint, and situated within 20-mile or place limits of Northern Pacific R. R., and within limits of St. P. & P. R. R., now St. P., M. & M. Ry." Record, 187 (426), 193 (448.)

2. "Schedule C. List of lands, mentioned in Schedule A of lands annexed to complaint, situated within 30-mile indemnity limits of Northern Pacific R. R., within limits of withdrawal of October 12, 1870, and within limits of St. P. & P. R. R., now St. P., M. & M. Ry." Record, 187 (426), 193 (448.)

3. "Schedule D. List of lands, mentioned in Schedule A annexed to complaint, and situated within 40-mile indemnity

limits of Northern Pacific R. R., within limits of withdrawal of October 12, 1870, and within limits of St. P. & P. R. R., now St. Paul, M. & M. Ry." Record, 187 (426), 201 (466.)

At the hearing before the master the defendants objected to his considering or reporting on any lands outside the place limits of the plaintiff unless shown to have been selected by it prior to the filing of the complaint in this action (March 15, 1875,) and prior to the definite location of the line of the St. Paul & Pacific R. R., if within the ten-mile limits of that company, or prior to selection by that company if within its 20-mile limits.

They made a like objection as to any lands between plaintiff's 30 and 40 mile limits (being its second indemnity belt) unless, in addition to the proof required by the former objection, it should also be shown that plaintiff had a right to select such lands as indemnity under the conditions of the joint resolution of Congress of May 31, 1870, (allowing indemnity for deficiencies resulting from sales, grants, preemptions, etc., subsequent to July 2, 1864.)

And they objected to any evidence of selections by plaintiff subsequent to the filing of the complaint in this cause in the state court, March 15, 1875.

Record, 192–3 (446–7.)

The master's report shows that no evidence of selection by plaintiff was produced before him.

Record, 191–3 (442–7.)

At the hearing on the master's report, the defendants, in their exceptions (1, 2, 6) renewed the above objections. Record, 220–222 (509–516.)

They also excepted to the report for the want of proof of any definite location of plaintiff's entire line (exception 9) and for want of proof of the definite location of any part of defendant's line (exception 10) prior to the commencement

of this suit or prior to selection of lands in the 30 and 40 mile indemnity limits. Record, 222 (517–8.)

After argument these exceptions were overruled, the 6th being overruled as to all lands in Schedules C. and D. Record, 224–5 (529–530.)

Thereupon a final decree was entered awarding the plaintiff all the lands in Schedules B., C. and D., and dismissing the Manitoba Co.'s supplemental bill.

Briefly stated the grounds of the decision in the circuit court were:

1. That the defendant's grant dates from March 3, 1871, and not from 1857 or from 1865, and is therefore junior in date to the grant to the plaintiff.

2. That the description in the grant to plaintiff of lands "not granted" at the date of its definite location, did not exclude lands embraced by such grants as those of March 3, 1865, and March 3, 1871, though made before plaintiff's definite location.

3. That the location of the 228 miles of plaintiff's "Minnesota Division" was sufficient to entitle it to lands in place as well as to select indemnity lands.

4. That the withdrawal by the land department October 12, 1870, excepted the lands embraced therein from the operation of the act of March 3, 1871.

5. That such withdrawal was properly made, and was effectual, although—

(*a.*) It was made upon filing a map of the proposed general route of part only of plaintiff's road.

(*b.*) It assumed to withdraw such lands from "sale, pre-emption, homestead, and other disposal," whereas the act of July 2, 1864, itself made a withdrawal from "sale, entry or pre-emption," only.

6. That to entitle plaintiff to lands outside its place but within the withdrawal limits, it was not necessary to prove any selection at all, still less to show, as to lands claimed

in the second indemnity belt, a deficiency in the primary limits occasioned by dispositions made subsequent to July 2, 1864.

Each of these conclusions we contend is erroneous.

ACTS OF CONGRESS.

The title of either company to any of the lands must be founded on a grant from congress, and the case depends largely on the construction of the following legislation.

I.

Acts relating to the Northern Pacific Co.

(1.) Act of July 2, 1864, (13 U. S. St. 378; 2 U. S. Land Laws, 803.)

An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound on the Pacific coast, by the northern route.

Section 1 creates the corporation and proceeds:

" And said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, *beginning at a point on Lake Superior* in the States of Minnesota or Wisconsin; *thence* westerly, by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, *to some point on Puget's Sound*, with a branch via the valley of the Columbia river to a point at or near Portland in the State of Oregon, leaving the main trunk line at the most suitable place, not more than three hundred miles from its western terminus. * * *"

"SEC. 3. *And be it further enacted*,

"That there be and is hereby granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of *said railroad and telegraph line to the Pacific coast* * * * every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line as said company may adopt through the territories of the United States, and ten alternate sections per mile on each side of said railroad whenever it

passes through any State, and *whenever*, on the line thereof, *the United States have full title, not* reserved, sold, *granted, or otherwise appropriated*, and free from pre-emption or other claims or rights, *at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the general land office.*

"And whenever prior to said time any of said sections or parts of sections shall have been *granted*, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections:

"*Provided*, that if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore *granted* by the United States, as far as the routes are upon the same general line, the amount of land heretofore *granted* shall be deducted from the amount *granted* by this act. * * *

"SEC. 6. *And be it further enacted*, That the president of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land *hereby*" (*i. e.* by section 3) "*granted* shall not be liable *to sale, or entry, or pre-emption*, before or after they are surveyed, except by said company, as provided by this act. But the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be and the same are hereby extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall not be sold by the government at a price less than two dollars and fifty cents per acre when offered for sale."

(2.) Joint resolution of May 31, 1870.

A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road and to secure the same by mortgage, and for other purposes, approved May 31, 1870. (16 U. S. St. 378; 2 U. S. Land Laws, 816.)

ing in any object of internal improvement, or for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads and branches, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said Territory or future State shall be subject to the future disposal of the Legislature thereof for the purposes herein expressed, and no other; and the said railroads and branches shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said Territory or future State shall be disposed of by said Territory or future State only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches, may be sold; and when the Governor of said Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed, as aforesaid, and included within a continuous length of twenty miles of each of such roads or branches, may be sold; and so from time to time, until said roads and branches are completed; and if any of said roads or branches is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads and branches, un-

der the direction of the post-office department, at such price as Congress may by law direct: *provided*, that until such price is fixed by law, the Postmaster General shall have the power to determine the same.

SEC. 6. *And be it further enacted*, That in case any lands on the line of said roads or branches are within any Indian Territory, no title to the same shall accrue, nor shall the same be entered upon by the authority of said Territory or State, until the Indian title to the same shall have been extinguished.

(2.) Joint Resolution of July 12, 1862. (12 U. S. St. 624; 2 U. S. Land Laws, 797.)

"*A Joint Resolution authorizing the State of Minnesota to change the lines of certain branch railroads in said State and for other purposes*," approved July 12, 1862.

Whereas, etc., * * *

Be it resolved, That in lieu of that part of the railroad grant to Minnesota territory by act of congress approved March 3, 1857, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridan, there shall be granted to the state of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the state may designate, having its southwestern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with the right of indemnity between the fifteen-mile limits thereof: *provided*, this resolution shall take effect from the filing in the general land-office of the acceptance by the authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant as authorized by the said act of March 3, 1857, being by said acceptance disencumbered of the railroad grant, shall be dealt with as other public lands of the United States.

(3) Act of March 3, 1865. (13 U. S. St. 526; 2 U. S. Land Laws, 809.)

An act extending the time for the completion of certain railroads in the States of Minnesota and Iowa, and for other purposes.

Be it enacted, etc.

That the quantity of lands granted to the State of Minnesota, to aid in the construction of certain railroads in said State, as indicated in the first section of an [act] entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the state of Alabama, to aid in the construction of a certain railroad in said State," approved March third, eighteen hundred and fifty-seven, shall be increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts, and as hereinafter provided.

SEC. 2. *And be it further enacted*, That the first proviso in the first section of the act aforesaid shall be so amended as to read as follows, to-wit: *provided*, that the land to be so located shall in no case be further than twenty miles from the lines of said road and branches, to aid in the construction of each of which said grant is made; and said lands granted shall, in all cases, be indicated by the Secretary of the Interior.

SEC. 3. *And be it further enacted*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operations of this act, except so far as may be found necessary to locate the route of said road through such reserved lands, in which case the right of way shall be granted, subject to the approval of the president of the United States: *provided further*, that any lands which may have been granted to the Territory or State of Minnesota, for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension of said grant or grants, shall be deducted from the full quantity of lands hereby granted, and that any lands which may have been so granted shall be strictly ap-

plied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law.

SEC. 4. *And be it further enacted*, That the sections and parts of sections of land, which by said acts and this grant shall remain to the United States, within ten miles on each side of said roads and branches, shall not be sold for less than double the minimum price of public lands when sold, nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid: *provided*, that actual *bona fide* settlers under the pre-emption laws of the United States, may, after the proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the increased minimun price: *and provided, also*, that settlers under the provisions of the homestead law, who comply with the terms and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

SEC. 5. *And be it further enacted*, That the lands hereby granted shall be subject to the disposal of the Legislature of the state of Minnesota, for the purposes aforesaid, and no other. And the said railroads and branches shall be and remain public highways for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

SEC. 6. *And be it further enacted*, That the lands hereby and heretofore granted to said Territory or State of Minnesota shall be disposed of by said State for the purposes aforesaid only, and in manner following, namely: When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of said road is completed in a good, substantial and workmanlike manner, as a first-class railroad, and the said Secretary shall be satisfied that said state has complied in good faith with this requirement, the said Secretary of the Interior shall issue to said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed section of ten miles of road, and no further. And when the Governor of said State shall certify to the Secretary of the Interior, and the Secretary shall be satisfied that another section of said road, ten consecutive

miles in extent, connecting with the preceding section, or with some other first-class railroad, which may be at the time in successful operation, is completed as aforesaid, the said Secretary of the Interior shall issue to the said State patents for all the lands granted and situated opposite to and within the limits of twenty miles of the line of said completed section of road or roads, and extending the length of said section, and no further, not exceeding ten sections of land per mile for all that part of said road thus completed under the provisions of this act, and the act to which this is an amendment, and so, from time to time, until said roads and branches are completed. And when the Governor of said State shall so certify, and the Secretary of the Interior shall be satisfied that the whole of any one of said roads and branches is completed in a good, substantial and workmanlike manner, as a first-class railroad, the said Secretary of the Interior shall issue to the said State, patents to all the remaining lands granted for and on account of said completed road and branches in this act, situated within the said limits of twenty miles from the line thereof, throughout the entire length of said road and branches: *provided*, that no land shall be granted or conveyed to said State under the provisions of this act on account of the construction of any railroad or part thereof that has been constructed under the provisions of any other act at the date of the passage of this act, and adopted as a part of the line of railroad provided for in this act; *and provided*, that nothing herein contained shall interfere with any existing rights acquired under any law of Congress heretofore enacted, making grants of land to the State of Minnesota to aid in the construction of railroads; *and provided further*, that said lands, granted by this or prior acts, shall not in any manner be disposed of, except as the same are patented under the provisions of this act; and should the State fail to complete any one of said roads or branches within eight years after the passage of this act, then the said lands undisposed of as aforesaid, granted on account of said road or branches, shall revert to the United States.

SEC. 7. *And be it further enacted*, That as soon as the Governor of the said State of Minnesota shall file, or cause to be filed, with the Secretary of the Interior, maps designating the routes of said roads and branches, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

SEC. 8. *And be it further enacted*, That the United States mail shall be transported on said road, under the direction of the post-office department, at such price as Congress may by law provide: *provided*, that until such price is fixed by law, the Postmaster General shall have power to fix the rate of compensation.

SEC. 9. *And be it further enacted*, That the provisions of this act shall also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution, approved July twelfth, eighteen hundred and sixty-two, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, as though said joint resolution had not passed, and also to the line adopted by said State, in lieu of the portion of the line so vacated.

(4.) Act of March 3, 1871, (16 U. S. St. 588; 2 U. S. Land Laws, 819.)

An act authorizing the St. Paul & Pacific Railroad Company to change its line in consideration of a relinquishment of lands.

Be it enacted etc., That the St. Paul & Pacific Railroad Company may so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, *and from* St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines, as is provided for the present lines by existing laws: *Provided, however*, that this change shall in no manner enlarge said grant, and that this act shall only take effect upon condition of being in accord with the legislation of the state of Minnesota, and upon the further condition that proper releases shall be made to the United States, by said company, of all lands along said abandoned lines from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior, and that upon the execution of said releases such land so released shall be considered as immediately restored to market without further legislation.

POINTS.

Upon the construction of the foregoing legislation, and upon the evidence in the case, the following propositions are submitted in support of the appellants' assignments of error, which are stated in the principal brief—that of Mr. Pinney—on their behalf, at pages 86–90.

FIRST.

The plaintiff has wholly failed to show title to any of the lands awarded to it, even if they are not within the grant to the state of Minnesota.

SECOND.

As all the acts relied on by defendant antedate the plaintiff's filing of a map of definite location even of its "Minnesota Division," (November 21, 1871,) defendant's grant is paramount to that of plaintiff.

THIRD.

The defendant is entitled to the lands in dispute under the grant to the State of Minnesota by the acts of March 3, 1857, and March 3, 1865.

1. The grant made by the act of March 3, 1865, is an enlargement of that made by the act of March 3, 1857, and has relation to the date of the original act. Therefore the defendant's grant antedates the act of July 2, 1864.

2. That part of defendant's line along which the lands in dispute lie is part of "the line of the original grant" made by the acts of March 3, 1857, and March 3, 1865, and recognized as such in the act of March 3, 1871.

FOURTH.

The act of March 3, 1871, does not make a new grant, but provides for the alteration of the lines for which the "original grant" was made, and continues such original grant in force for the lines as altered.

FIFTH.

Defendant's priority of grant is not affected by the withdrawal made October 12, 1870, along a line on a map filed by plaintiff as the map of *a portion* of its proposed general route.

The action of the secretary was not intended nor was it effectual to defeat the intention of congress to preserve the priority of defendant's grant.

Nor was it effectual to *except* the withdrawn lands from the operation of the act of March 3, 1871.

SIXTH.

By reason of the relation between the Northern Pacific and the St. Paul & Pacific companies at and before the passage of the act of March 3, 1871; the part taken by plaintiff in procuring that act to be passed; in procuring the St. Paul & Pacific Co. to relinquish lines and lands which plaintiff could not otherwise obtain, and which the plaintiff thereupon at once appropriated and still holds; in directing the location and construction of the altered lines of the St. Paul & Pacific Co.; in issuing and negotiating the mortgage bonds of the St. Paul & Pacific Company, with the representations contained in such bonds and mortgage—the plaintiff is estopped as against the bondholders and the Manitoba Co., (which succeeded to their rights and became purchaser at the mortgage sale,) from claiming any of the lands in dispute.

FIRST.

The plaintiff has wholly failed to show title to any of the lands awarded to it, even if they were not within the grant to the State of Minnesota.

I. *As to* ALL *the lands awarded plaintiff.*

The defendant has the legal title, and as in other cases, the plaintiff must recover, if at all, on the strength of its own title. It must show a grant of the very land claimed.

"Where the description of the premises intended to be conveyed is composed of several particulars, all of which are necessary to ascertain the subject of the grant, nothing will pass except that which agrees with *every particular* of the description." Metcalf on Contracts, 294.

And this is especially true of grants by the United States to a private corporation, which are always construed strictly *contra proferentem.*

To bring any piece of land within the description of plaintiff's grant, it must affirmatively and clearly appear, not only that it is (1) in an odd-numbered section, and (2) not mineral, but it must also clearly and affirmatively appear that the land claimed is (3) land to which the United States has full title, (4) not reserved, (5) not sold, (6) *not granted*, (7) not otherwise appropriated, and (8) free from pre-emption or other claims or rights. And the land must agree with each particular of the description (9) at the time the line of the road is definitely fixed, and a plat thereof filed in the general land-office.

Any land reserved or granted *at the time of the filing of the map* is just as much outside the description, and hence just as much outside the grant, as land in an even-numbered section. Such land is not *excepted* from the grant. It is simply not within the description.

In the language of this court: "When the line was fixed,

(which we have already said was by the act of filing this map of definite location,) *then* the criterion was established by which the lands to which the road had a right were to be determined. *Topographically*, this determined which were the ten odd sections on each side of that line where the surveys had then been made. Where they had not been made, this determination was only postponed until the survey should have been made. The filing of the map of definite location furnished *also* the means of determining which lands had *previously to that moment* been sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim had attached. * * * *In regard to all such sections, they were not granted.* The express and unequivocal language of the statute is that the odd sections *not* in this condition are granted. *The grant is limited, by its clear meaning*, to the other odd sections, and not to these."

Kansas Pacific Ry. Co. v. *Dunmeyer*, 113 U. S. 629, 640–1.

And of this very grant this court says:

"The act of congress * * * contemplates the filing by the company, in the office of the commissioner of the general land office, of a map showing the definite location of the line of its road, and *limits the grant* to such alternate odd sections as have not, *at that time*, been reserved, sold, granted, or otherwise appropriated, and are free from preemption, grant, or other claims or rights."

Buttz v. *Northern Pacific R. Co.*, 119 U. S. 55, 71.

Until the filing of the map of definite location, the company can claim no land, for there is no criterion established, and there can be no lands which answer the description of the grant.

The "line of *said* road" which is thus to be definitely fixed and a map filed, is, of course, the line which by section 1 the

company is authorized to locate and construct, that is, a "continuous" line from Lake Superior to Puget's Sound, north of the 45th parallel. It is for *said* line that the lands are granted by section 3. This line is a single, indivisible line, not a series of divisions or connected lines. There is but one Northern Pacific Railroad. And when congress, in the same section 3, names, as the criterion for determining what lands are granted, the fixing of the definite location of "*said* line," and the filing of a plat thereof, it means the entire line from Lake Superior to Puget's Sound, and not a fragment of it.

If congress should provide for the conveying of land to a railway company "at the time the line of said road is constructed and a plat thereof filed," etc., it is very clear that the company could claim no lands until the entire line had been constructed. Hence the usual provisions for conveyances on completion of specified sections. But this act and other acts contain no provisions for the acquisition of rights by partial location or along any section or division as soon as located. They recognize no location of sections of roads as conferring rights. They know of and provide for no location except a location of the entire line.

Undoubtedly, a line may and must be located upon the ground piecemeal from day to day, and probably a series of maps covering the whole line, would, *when the last one was filed*, be equivalent to one map of definite location. But until the last was filed, *and the series complete*, there would be no definite location, and no map on file, of "said line."

In *Cedar Rapids, etc., Railroad* v. *Herring*, 110 U. S. 27, the company was required to file a map, "definitely showing such modified line of their road." A map of part only of the line was filed. The court say (p. 41:)

"It is true a map of part of the line was filed in 1865, but this can in no sense be said to be a map definitely showing the modified line of the road. It showed only a part of it, and left the secretary in ignorance where the road would

yet be carried to, and what quantity of land it would be entitled to when finished. *In all these cases* the requirement has been of a map of *the line of the road*—of the whole road, not part of it; a complete, not a partial, map; a map definitely showing that line, as the language clearly means."

And see *Kansas Pacific Ry. Co.* v. *Dunmeyer*, 113 U. S. 629, 640–1.

Hence, without showing a location and filing of a map of the *entire line*, plaintiff can claim no lands, either as granted or as indemnity lands.

But the plaintiff has wholly failed to show the making of a definite location of its entire line from Lake Superior to Puget's Sound prior to the date (November 18, 1871) of the filing of defendant's map of definite location, or prior to the date (January 14, 1875) of the patent to the state of Minnesota, *or at all.*

It has put in evidence what is called a map of its "general route" through Wisconsin and Minnesota, (Exhibit 4,) and also a so-called map of its general route as amended. (Exhibit 2.)

In its bill of complaint the plaintiff does not allege that it has ever definitely located its entire line or filed a map of such location. It avers the definite fixing of a line and the filing of a map of it. Record, 44 (133.) This is put in issue by the answer of the mortgage trustees. Record, 69 (184.) The only proof offered is the map, (Exhibit 3,) which is not claimed to be anything more than a map of the "Minnesota Division" of the Northern Pacific Railroad, as located and constructed from a junction with the Lake Superior and Mississippi (now the St. Paul & Duluth) railroad at Thomson (some 22 miles west of Lake Superior) to Moorhead on the Red River of the North.

Record, 251 (599); 283 (650.)

This "Minnesota Division" is a small fragment out of the "said line." It is but 228 miles in length, and is far from touching either the initial or terminal points of that line.

This failure to show a definite location of its ENTIRE *line is fatal to the plaintiff's claim to any of the lands in controversy.*

II. *As to the lands awarded plaintiff in schedules C and D, situate outside the 20 mile or place limits of the "Minnesota Division."*

Besides the failure to show a definite location and the filing of a map, the plaintiff's claim to lands in either of those schedules is fatally defective, because—

(1.) It has shown no selection of any of these lands prior to the patent to the state of Minnesota, (January 14, 1875,) or at all. And, of course, it has not shown the approval by the secretary of the interior of any selections. Therefore, it has not shown an equitable title to or any interest in any one parcel of these lands. *Wisconsin R. R. Co.* v. *Price*, 133 U. S. 496, 505, 511, *et seq.*

(2.) It has shown no right to make a selection of any of the lands in schedule D, (that is in its second indemnity belt, under the resolution of May 31, 1870,) for it has not shown or attempted to show deficiencies arising from grants, sales, reservations, pre-emption or homestead entries, etc., "*subsequent to the passage of the act of July 2, 1864.*" And, of course, it has not shown that the deficiencies from this cause could not be supplied within its *first* indemnity belt. Hence, it has shown no right to go into the second belt at all.

SECOND.

But if the plaintiff has shown a right to the lands unless the defendant's legal title is sustained by an equal or superior equity, then—

As all the acts relied on by defendant antedate the plaintiff's filing of a map even of its "Minnesota Division," defendant's grant is paramount to that of plaintiff.

It will hereafter be shown that defendant's grant has relation to March 3, 1857—at any rate to March 3, 1865. But assuming that it dates only from March 3, 1871, it is submitted that the lands embraced in it are not within the description of plaintiff's grant.

One of the particulars of description which must be answered by each parcel of land claimed by plaintiff before it can find a place within its granting act is that it shall be land to which the United States has full title, "not granted," at the time of filing plaintiff's map of definite location.

The map of the "Minnesota Division" was filed November 21, 1871. The last of defendant's acts is that of March 3, 1871. All of them were in force prior to and on November 21, 1871. Lands granted by those acts were not lands "not granted" on November 21, 1871. Hence the lands in defendant's 10 mile limits are not within plaintiff's grant. To the lands in its 20 mile or indemnity limits, defendant has the better title by reason of priority of selection, the plaintiff, indeed, having shown no selection at all.

THE USE OF THE WORD "GRANTED."

This word "granted" occurs several times in the third or granting section of the act of 1864. It is the basis of the

grant to plaintiff: "There is hereby *granted*." It is made part of the description—"lands * * * not *granted*." Indemnity is given for sections "*granted*" prior to said time—*i. e.* prior to the filing of the map—an idle provision unless the company should be liable to lose lands by reason of grants subsequent to the date of the act and prior to the filing of the map. But if the company's route shall be found on the line of any other railroad route for which lands have been *heretofore* "*granted*," then, so far as the routes are on the same general line, the amount of land heretofore "*granted*" shall be deducted from the amount "granted" by this act—and the company can have no indemnity for it; whereas it can have indemnity for lands afterwards granted in all cases, and also for lands "heretofore granted," in cases where its loss from conflict between the grants results from any other cause than the plaintiff voluntarily seeking such conflict by locating its line on the route aided by such prior grant. And the very title of the act is "an act *granting* lands," etc.

Again, in the joint resolution of May 31, 1870, the company is given an additional belt of 10 miles in which to make selections "to the amount of the lands that have been *granted*, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, *subsequent to the passage of the act of July 2, 1864.*"

This word "granted" cannot be rejected. It is part of the description which the lands must answer. "Not granted" can no more be rejected than "not mineral," or "in odd-numbered sections," or "free from pre-emption claims." And the act is a law as well as a grant, and—

> "A legislature is presumed to have used no superfluous words. Courts are to accord a meaning, if possible, to every word in a statute. Where a given construction would make a word redundant, it is reason for rejecting it."

Platt v. *Union Pacific R. Co.*, 99 U. S. 48, 58.

"It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."

Montclair v. *Ramsdell*, 107 U. S. 147, 152.

Applying to this case the reasoning (and, with but slight changes, the language) of this court in *Kansas Pacific Ry. Co.* v. *Dunmeyer*, 113 U. S. 629, 638–9, it is submitted: In the terminology of the laws concerning the disposition of the public lands of the United States, the word "grant" has a distinct and well-known meaning in regard to the mode of acquiring rights in those lands. In the third section or granting clause, lands *granted*, sold, reserved, or otherwise appropriated, at the time the definite location of the road is fixed, are excluded from the description of lands granted to the company. Here *grant*, sale, pre-emption and homestead claims are mentioned as four different modes of acquiring an interest in the public lands, *and the words are clearly used because they were thought to be necessary.* But *a grant by congress* is, throughout the whole body of laws for disposing of the public lands, understood to mean a different thing from a sale for money in hand, or the establishment of a pre-emption or homestead right. The granting section excludes lands *granted* as well as lands sold or to which a pre-emption or homestead claim had attached. Section 6 makes a reservation "from sale or entry or pre-emption." On filing of the map of general route the lands were therefore to be reserved from sale, entry, and pre-emption only, and not from the operation of congressional grants.

The word "grant" in the passages quoted from the act of July 2, 1864, in the joint resolution of May 31, 1870, and throughout the land laws and the decisions of the courts, means a disposition by act of congress to a grantee

named—as distinguished from a disposition under general laws to purchasers or settlers.

For many years prior to July 2, 1864, all or nearly all "grants" had been grants—usually floating grants—in aid of railways and other works of internal improvement. If there be any kind of "grant" by congress that can be included in the word "granted" in this act, a grant to a state in aid of a railroad cannot be excluded.

In the title and in every other part of the act of July 2, 1864, whenever the words "grant," "granted" and "granting" occur, they are used to make or describe a grant by congress in aid of a railway. Why should the word "granted" in the expression "not granted" be given a meaning different from what it bears every where else in the act and other acts, or given no meaning at all?

The company was empowered to locate its line anywhere between the 45th and 49th parallel—a range of 4 degrees of latitude or nearly 280 statute miles. The grant was of 20 sections per mile in the states and forty in the territories—and the greater part of the line would be in the territories. It far surpassed in magnitude any that had preceded it. Should enough land in the primary or indemnity limits be left undisposed of to fill the grant, the company's territory would lack but little of being as large as Kansas or Minnesota. If we are to seek a *reason* for the plain intent of congress in the use of the words "not granted," or in making so vast a grant, the same reason answers in both. Congress naturally would not preclude itself from making any grants needed to develop any part of the vast territory, 280 miles wide by 2,000 miles long, in which the company might locate its line anywhere at its own will—grants which should not be defeated by the plaintiff locating its road along or across them. And it made express provision for such grants by using the words "not granted." And it enlarged the quantity and limits of the grant in order that it might be

left free to make all needed grants within the territory open to the company, and at the same time leave it a far larger grant than any company had ever received.

On July 2, 1864, congress must have contemplated an increase of the railway grant made to Minnesota by the act of March 3, 1857. Between that date and July 1, 1862, (the date of the Union Pacific grant,) no railroad grants were made. On March 3, 1863, the grant to Kansas was made and was of 10 sections. (12 U. S. St. 772.) On May 5, 1864, the grant to Wisconsin was increased to 10 sections, and on the same day a 10-section grant was made to Minnesota for a railway from St. Paul to Lake Superior. (13 U. S. St. 64, 66.) On May 12, 1864, a 10-section grant was made to Iowa; and, for one of the Minnesota lines named in the act of 1857, four additional sections were granted. (13 U. S. St. 72.) On July 1, 1864, a grant of 10 sections was made to Kansas. (13 U. S. St. 339.) Congress, if it had not already, on July 2, 1864, determined to increase its grant to Minnesota, must have been aware that such increase would be asked for and could not be refused. And, doubtless, purpose of the use of the words "not granted" was that the grant to Minnesota might be increased, and new grants made as might be needed in that part of the country north of the 45th parallel, at any time before the company's location, which grants should have the same effect in every particular as if the Northern Pacific grant had never been made.

And in the joint resolution of May 31, 1870, congress recognizes that losses have occurred and may occur by reason of *grants* made after July 2, 1864, and before the definite location. And it not only gives indemnity for lands so "granted," but gives additional indemnity belts, each 10 miles wide, in which such losses may be made good. It is believed that no such increase of indemnity belts, without increase of grant, was ever made in any other case. If it were meant merely to supply deficiencies caused by sales, pre-

emptions, etc., it would be clearly against the uniform policy of congress—a premium for delay in locating the road. And there would be less justification or reason for it than in other cases, because for nearly all its length the line ran through a country entirely unsettled when the grant was made, and it does not appear that any unusual losses had resulted from settlements between July 2, 1864, and May 31, 1870, or were likely to result from settlements made between that date and the filing of the map of general route. But losses would occur from some, and might from other, grants made between July 2, 1864, and May 31, 1870, and might occur from grants thereafter made. And it could only have been to make up such losses that congress departed so widely from its ordinary policy and gave these additional indemnity belts.

Congress may have assumed, without knowing, that lands had been taken up by settlers or sold pursuant to general laws since July 2, 1864, within the vast area open to plaintiff to locate its line in, which dispositions might reduce the quantity of land falling within the description of the grant on the location of the road. But if knowledge on any subject is ever to be imputed to congress, it must be held that when, in 1870, indemnity was given for lands "granted" since July 2, 1864, congress had in mind the grants it had made—among them the grant by the act of March 3, 1865, the line of which must *necessarily* cross any *possible* location of plaintiff's line.

Other grants between July 2, 1864, and May 31, 1870, that *might* reduce the lands available for plaintiff were those to Wisconsin, June 21, 1866, (14 U. S. St. 360; 1 U. S. Land Laws, 283;) and to Minnesota, July 13, 1866, (14 U. S. St. 93; 2 U. S. Land Laws, 813.)

And, as will be shown, the St. Vincent extension of the St. Paul & Pacific Co. had, in 1869, been actually located on the ground from Crow Wing to Otter Tail lake and thence to Town 142, *on the very route* on which the plaintiff subse-

quently located and built a part of its "Minnesota Division." And the company had filed a map of such location and was pressing its acceptance on the secretary of the interior. The resolution in effect recognizes and declares that grants subsequent to July 2, 1864, are paramount to plaintiff's grant.

In the joint resolution of May 31, 1870, the word "granted" must be held to include grants for railways. It must have had the same meaning originally in the act of July 2, 1864. And if it did not, still congress, by the joint resolution, at least put that construction on the word in the original act —the original grant—a construction accepted by plaintiff by its acceptance of the resolution, and which has ever since been its true and only construction.

The construction of the act of July 2, 1864, by the Circuit Court.

The court held that plaintiff's grant was not distinguishable from that to the Union Pacific Co. by the act of July 1, 1862, construed in *Mo., etc., Ry. Co.* v. *Kansas Pac. Ry. Co.*, 97 U. S. 491. That was a grant of lands "not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed."

In that case the court held that "otherwise disposed" of did not include "granted." In this case the court holds that "otherwise appropriated" is equivalent to "otherwise disposed of" and does not include "granted." This we concede—indeed, we insist upon it. "Granted," *being specified*, could not be included in "*otherwise* appropriated." But the circuit court goes farther, and holds that "*granted* or otherwise appropriated" means the same as "otherwise disposed of" in the act of 1862.

In short, the court simply reads out of the act the word "granted."

In the Union Pacific act, the words "otherwise disposed of" were held not to include "granted," because a grant by congress to a grantee named is not a disposition *ejusdem generis* with those specifically named, and because, in view of the policy of congress in "similar" grants, "it was not within its language or purpose to except from its operation any portion of the *designated* lands for the purpose of aiding in the construction of other roads." 97 U. S. 498–9.

In the decision cited, this court aimed solely to ascertain the intent of congress in the act then under construction. It says as much on page 497. Its decision is to the effect that the 37th congress, when it passed the act of 1862, did not suppose that the language it used, "otherwise disposed

of," would include dispositions by "grant." If congress had supposed that these words included grants, it must have intended to include "granted" in "otherwise disposed of," and this court would have so held.

Now, the 38th congress and 41st, equally with the 37th, must be deemed to have been aware that "otherwise disposed of," or "otherwise appropriated," following the words "reserved, sold," and preceding the words "free from pre-emption or other claims or rights," would not include "granted" —would not exclude from the description lands embraced in a later present grant. With this knowledge, the 38th congress in the original act, *and the 41st congress in the joint resolution*, advisedly and *ex industria* inserted the word "granted," for the evident purpose of expressing an intent that would *not* be expressed by or implied in the words "otherwise disposed of" or "otherwise appropriated."

The circuit court says that "the decision in 97 U. S. *supra*, places all land-grant roads on the same plane." Record, 180 (416.) What this court *says* in the case cited, (pp. 497–8) is that its construction of the grant—to-wit, that it is a present grant—"is of course applicable to all *similar* congressional grants, and there is a vast number of them," and will tend to prevent attempts to gain priority by earlier location. The court did not say that dissimilarities in land-grants were to be ignored for the sake of uniformity. It did not profess to set up a Procustean standard to which all land grants must conform—mutilated if need be into conformity. It did not say that words of description in a grant would or could be rejected in order to put it on the same plane with other grants. It did not say that in construing any law—least of all a law that is also a grant—it would disregard the cardinal rules of interpretation already quoted.

The fact that the word "granted" expresses an intent of the 38th congress different from the policy indicated by former legislation will not justify its rejection. A sufficient

reason for the intent has already been suggested. And this is no accidental or sporadic variation in an individual act from the characteristics of the class to which it properly belongs. The act of July 2, 1864, is the first of a new *class* of acts making grants that might prove far in excess of any earlier ones, and as to which a new policy was adopted, (advisedly, it must be presumed,) differing from the former policy as to former and smaller grants, and with ample reason for such difference. Other acts of this class are

July 27, 1866, (14 U. S. St. 292; 1 U. S. Land Laws, 470,) for the Atlantic & Pacific R. Co., granting 20 sections in the territories and 10 in the states.

March 3, 1871, (16 U. S. St. 573; 2 U. S. Land Laws, 1064,) making in section 23 a grant to the Southern Pacific R. Co., in all respects the same as that to the Atlantic & Pacific Co.

The reasons that would justify rejecting "not granted" from these acts would require that the grant in each should be reduced to 10 sections per mile to conform to the maximum of previous grants.

SUMMARY OF NORTHERN PACIFIC GRANTS.

The rights of the Northern Pacific Company under its grants may be thus summarized:

1. It has no rights at all in any parcel of land until the definite location or "final location" of its entire line and the filing of a plat of such location in the general land-office. And it has not shown any location or the filing of any such plat.

2. On filing such plat, the grant attaches to those odd sections (and to those only) to which the United States "at that moment" have full title, which they have not previously sold, *granted, reserved*, or otherwise appropriated, and to which a homestead or pre-emption claim has not theretofore attached, within 20 miles of the line so located. It does not attach to any lands which before "that moment" may have been granted to the state in aid of the St. Paul & Pacific Company's line.

3. If a deficiency is found in those odd sections within the 20 mile limits, occasioned by grants or pre-emptions, etc., made before or after July 2, 1864, the company may go ten miles farther, and *select* lands to supply the deficiency; *except* that if the deficiency results from such a location of the company's line on the same general route with another line for which lands had been granted *prior* to July 2, 1864, that the land limits of the two companies conflict, the Northern Pacific Company (which of course must yield to the company having the elder grant) cannot supply elsewhere the deficiency thus resulting.

4. If any part of the deficiency within the 20 mile limits results from *grants* or reservations made by congress, or from pre-emptions, etc., *after July 2, 1864*, and the deficiency thus arising cannot be supplied within the 30 mile limits, then, and in that case *only*, the company may go ten miles farther

and *select* lands to supply it; and the company can claim no lands outside the 30 mile limits except for deficiencies thus resulting from dispositions made, by *grant*, reservation, or otherwise, *subsequent* to July 2, 1864.

5. It can make no claim to any odd section outside the 20 mile limits until it has made a selection of it in lieu of a deficiency within the 20 mile limits, and such selection must be made under the direction of the secretary of the interior. No such selection has been shown.

THIRD.

The defendant is entitled to the lands in dispute under the grant to the state of Minnesota by the acts of March 3, 1857, and March 3, 1865.

The act of March 3, 1857, is identical (except in grantee and lines of road) with that to Wisconsin by the act of June 3, 1856, (11 U. S. St. 20; 1 U. S. Land Laws, 271,) construed in

Schulenberg v. *Harriman*, 21 Wall. 44.

It is essentially the same with the grants to states construed in

Leavenworth, etc., R. Co. v. *United States*, 92 U. S. 733, 741.
Grinnell v. *Railroad Co.*, 103 U. S. 739.
Van Wyck v. *Knevals*, 106 U. S. 360, 365.

And it has itself been construed in

St. Paul Railroad v. *Winona Railroad*, 112 U. S. 720, 726.

In the strictest sense it makes a present grant, taking effect by relation as of its date. And of course any title that defendant can assert under it must be superior to any title under the later grant of July 2, 1864, however that grant be construed.

The Construction of the Act of March 3, 1865.

This is not an independent act making a new and independent grant. It is in terms an amendment of the act of 1857—"the act to which this is an amendment," as it is called in section 6.

Whatever grant is made is an increase—an enlargement, an "extension," as it is called in section 3,—of the grant in the act of 1857. "The quantity of land granted by" the act of 1857 "shall be increased." The grant is still that of 1857, enlarged, increased, extended. The two acts together make but one grant.

Because it is an amendment, and because it enlarges an existing grant and does not make a new one, it should have the same construction which was given to the act of July 2, 1864, enlarging the grant in certain sections of the Union Pacific act of July 1, 1862. True, that change was made by substituting 10 for 5 in the original act. But the court put its decision on the ground that by this mode of amendment, congress meant to "enlarge the grant."

Mo. etc., Ry. Co. v. *Kansas Pac. Ry. Co.*, 97 U. S. 491, 497.

U. S. v. *Burlington, etc., R. Co.*, 98 U. S. 334, 338.

Or as it is put in the latter case in the circuit court, (4 Dillon, 305:) "In this act of 1864, the original grant of 1862 to the Union Pacific Co. *is increased* from five sections on each side of the road to ten"—the very word ("increased") used by congress in the act of March 3, 1865 to effect the same purpose.

"The intention of congress was to enlarge the first grant from six to ten sections per mile. * * * The act" (of March 3, 1865) "did not purport to change the character of the first grant, but to increase its quantity."

Barney v. *Winona, etc., R. Co.*, 117 U. S. 228, 231.

That is to say, in the act of 1865 congress expressed in words the same intent which in the cases cited the court say it expressed by the substitution of numbers.

The effect of the act is, therefore, not to make a new

grant of ten sections per mile as of its date, nor do the two acts make two grants—one of six sections as of the date of the earlier, and one of four sections as of the date of the later act. The two acts together grant ten sections as of the date of March 3, 1857, to which date the later act relates.

This is borne out by the provisos in sections 3 and 6, saving rights under the earlier act where the same land should fall within the six-mile limits of one road under the act of 1857, and outside the six but within the 10 mile limits of another under the act of 1865. If the act of 1865 had relation only to its date, no such saving clause would be needed.

As in the case of the Union Pacific grant, the mode of making this increase or extension "was evidently adopted that the grant might be treated as if thus made originally," except where the act itself expressly provides the contrary. 97 U. S. 497.

And if the act is to have this reading as between the United States and the state, it must have the same construction as against "all parties not having acquired in the mean time paramount rights."

No such rights had been acquired by plaintiff, for it made no location prior to November 21, 1871. Even in a present grant, not restricted to lands that should be "not granted" at a future date, it is held that until the grantee made a definite location, "the appropriation of lands even within the limits of the grant was in no respect an impairment of its rights."

Kansas Pacific v. *Atchison Railroad*, 112 U. S. 414, 422.

St. Paul Railroad v. *Winona Railroad*, Id. 720, 731–2.

And see *Northern Pacific R. Co.* v. *Traill County*, 115 U. S. 600, 609.

The total grant thus made is a grant of every alternate section within 10-mile limits—a grant of 10 sections in place —with provision for indemnity between the 10 and the 20 mile limits.

Barney v. *Winona & St. Peter R. Co.*, 117 U. S. 228.

That part of defendant's line along which the lands in dispute lie is part of the "line of the original grant" made by the acts of March 3, 1857, and March 3, 1865, and recognized as such in the act of March 3, 1871.

On May 22, 1857, the Minnesota territorial legislature incorporated the Minnesota and Pacific Railroad Co., and endowed it with the grant made by the act of March 3, 1857, for the road "from Stillwater, by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River" and for the "Branch, *via* St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, at such point as the legislature of said territory may determine," and fixed this latter point at St. Vincent, on the northern boundary of the territory and of the United States. Record, 347 (760.)

This branch road and its land grant must necessarily cross the entire land limits of any route which the Northern Pacific Co., under its later grant, could possibly select.

In 1862, all the franchises and property of the Minnesota & Pacific Co. vested in the St. Paul and Pacific Co. Record, 349 (763.)

A glance at the map shows that the portion of defendant's line along which these lands lie (between a point 12 miles south and a point 92 miles north of Glyndon, the crossing of plaintiff's and defendant's road,) is part of a line that might have been built from Crow Wing to St. Vincent, though such line would not be an air line.

The country in a direct line between Crow Wing and St.

Vincent was unfit for railroad building or for settlement. Accordingly, in 1869, when the St. Paul & Pacific Co. began the location of its St. Vincent branch, it located its line on the face of the earth from Crow Wing westwardly toward Glyndon to a point between Otter Tail and Rush Lakes, (in town 134, range 39,) and thence, in a direction about N. N. W., to town 142, between ranges 41 and 42, which was as far as the public surveys then extended. From Crow Wing to town 139, range 41, this line was almost coincident with the "Minnesota Division" of the plaintiff as located and constructed in 1871. On October 13, 1869, this location was approved by the board of directors, and proper maps were filed with the governor, and, in November, 1869, with the secretary of the interior.

Exhibit 7,(map.) Record, 288 (660), 289–290 (661–3), 393 (844), 526–533 (1090–1103.)

The secretary, under the mistaken opinion that the line should touch the intersection of the 10th parallel and 4th meridian, (under the joint resolution of 1862, that will be referred to,) declined to accept the map until satisfactory proof should be furnished that such a route was impracticable. During some months the company was engaged in making surveys to demonstrate (and which did demonstrate) that such was the fact. The country proved to be "of a very marshy character, interspersed by myriads of small lakes and ridges, and the construction of a railroad line over it would be unnecessarily expensive, so much so as to render it in my opinion impracticable as compared with the route located upon. The country is unfit for habitation, and I estimate that two-thirds of its area is composed of tamarack swamps, morasses and grass lakes or ponds, rendering a railroad line very circuitous to avoid them." This is the statement of the engineer in charge of the survey, furnished to the interior department. Record, 527 (1091–2.) As stated by

Mr. Rice, President of the St. Paul & Pacific Co., in regard to those surveys, "Engineering difficulties proved to be the existence of swamps, morasses, lakes, sand hills, of such a magnitude as to render the building of the road physically and financially impracticable." Record, 385 (830.)

It is a fair inference from the correspondence in evidence that on completion of the proofs required by it as to the character of the country, the interior department (in spite of its view that the intersection of the 10th parallel and 4th meridian should, if practicable, be made a point on the line,) would have accepted this map of the "Shepard survey," as it is called, as showing a location on a line authorized by the acts of 1857 and 1865.

This consummation was prevented, however, by the fact that, in 1870, the Northern Pacific Co., desiring itself to occupy the line thus selected by the St. Paul & Pacific Co., (and also the line which that company was authorized to locate to Lake Superior,) without incurring the penalty of diminution of its grant provided in such a case by the act of 1864, acquired all the stock of the St. Paul & Pacific Co., filled the board of directors of that company with its own directors, and initiated and controlled every act of that company. The proof on this point is clear and full, and no attempt has been made to dispute it.

Record, 383 (826), 469–471 (989–992), 520–524 (1079–1087.)

Having done so, the Northern Pacific Co. caused to be prepared and passed the act of March 3, 1871.

In that act congress recognizes a line running westwardly from Crow Wing to Otter Tail or Rush Lake and beyond as "the line of the original grant"—*i. e.* a line which might be located and built under the act of March 3, 1857.

A line drawn from Crow Wing just north of Rush Lake and continued in the same direction would strike the present

line of the St. Vincent Extension nearly 12 miles south of Glyndon; a line drawn from Crow Wing and passing between the lakes, or passing south of Otter Tail Lake, would in either case strike the present line more than 12 miles south of Glyndon. In each case the remainder of the line to St. Vincent would be on the line which has been located and built, and for which these lands were patented.

Even without this recognition in the act of 1871, the line so recognized as that of the "original grant" might well have been located as such. It appears that a direct line would have been impracticable, and it does not appear that the deviations of this line from a direct one were any greater than were required by the nature of the country or permissible in view of the purposes for which the grant was made.

But the act of 1871 sets all such questions at rest. It makes the line beyond Otter Tail and Rush Lakes, along which these disputed lands lie, the "line of the original grant" *ab initio*, a line for which the state has held its grant ever since March 3, 1857.

This is certainly the effect of the recognition as against the United States and all others not having acquired paramount rights. And such is its effect as against the Northern Pacific Co., for—

1. On March 3, 1871, that company, not having located its line, was not in a position to question any action by congress waiving any requirement as to location in a land-grant act prior to its own.

> *Kansas Pacific* v. *Atchinson Railroad*, 112 U. S. 414, 422.
>
> *St. Paul Railroad* v. *Winona Railroad*, Id. 720, 731–2.
>
> *Northern Pacific R. Co* v. *Traill County*, 115 U. S. 600, 609.

2. The Northern Pacific Co. itself procured the passage of the act of March 3, 1871, and the recognition contained in it.

3. Unless, in 1871, the line along which these lands lie was part of "the line of the original grant," it could not lawfully be located as such in the summer of 1871, when it was in fact located. The act of March 3, 1871, provided for a change of line east of Otter Tail and Rush Lakes, but beyond that point the line must be located and built on "the line of the original grant"—a line which, certainly after March 3, 1871, could and must be regarded as a line that could have been located under the original granting act.

On February 15, 1871, the Northern Pacific Co., by its board of directors, directed the making of a contract between the First Division Co. and Moorhead (one of its own directors) for the construction of the road of the St. Paul & Pacific Co. from Sauk Rapids (near St. Cloud) to St. Vincent. Record, 525 (1087.) And on May 10, 1871, the same board passed the following resolutions:

"*Whereas, This corporation is practically the owner of the St. Paul & Pacific and the St. Paul & Pacific First Division railroads, and their properties and estates, through an ownership of the share capital of those companies, and with a view to protect and promote this interest;* therefore

"*Resolved,* That there be appointed a committee of three, who shall take entire charge of the construction of said roads, and bring them into working use at the earliest day practicable, consistent with reasonable economy.

"*Resolved,* That said committee be also empowered to carry forward and perfect the negotiations for the delivery and sale of the bonds of the St. Paul & Pacific Railroad Company, and also to apply the proceeds of said sale to the construction of the roads according to existing agreements, and shall report their proceedings monthly to this board."

Record, 525 (1088.)

This committee was appointed, the road from St. Cloud via Glyndon to St. Vincent was located for its entire length under the direction of the Northern Pacific Co. and its chief engineer, and the portion to which the lands appertain was

constructed by Mr. Moorhead as trustee for the Northern Pacific Company, under the supervision of a committee of its directors.

Testimony of Morris. Record, 263–4 (618–9), 266–7 (623–4.)

The "line of the original grant," wherever situated, must necessarily cross the entire land limits of plaintiff, and the grant for that line must necessarily prevail over plaintiff's within the conflicting limits. The plaintiff assumed to determine the location of that line and to build the road upon it. It fixed upon the line along which these lands lie as a line that could be located under existing laws—which it could not unless it were "the line of the original grant." It fixed on Glyndon as the point for the inevitable crossing, thus saving to itself the lands it would have lost at whatever other point the road, if located on "the line of the original grant," would have crossed its own. And it got the bondholders' money to build, and it built a part of, the road on such line as the line of the original grant.

And having by this construction of the act got the bondholders' money and saved for itself the lands it would have lost to the St. Paul & Pacific Co. on a different construction of the acts, it cannot now be heard to say, as against the St. Paul & Pacific Co. and its bondholders, that the construction it then put on the acts of congress was not the true construction—that the line it then determined to be "the line of the original grant" was not such.

Daniels v. *Tearney*, 102 U. S. 415, 421.

The recognition by the act of March 3, 1871, as construed by the Circuit Court.

The circuit court, in disposing of this recognition, in the act of March 3, 1871, of "the line of the original grant,"

holds it of no avail to the defendant, for the reasons that—

1. It is inconsistent with the designation, in the joint resolution of July 12, 1862, of the intersection of the 10th standard parallel and the 4th guide meridian as a point on defendant's line.

2. The description "may have resulted from ignorance of geographical facts," and the reference "should not be carried beyond the mere purpose of description."

3. "The act was passed long after the grant to the Northern Pacific, and no mere implication should defeat or limit that grant. The road, as *constructed*, nowhere runs within 20 miles of that line," (i. e. the Shepard line of 1869,) "and at the point of crossing the Northern Pacific is more than 30 miles distant. While, as between the government and its grantee, any departure is waived if not insisted upon by the former, yet, as between two donees, contesting for rights in the same lands, large departures ought certainly to have weight in determining title."

Record, 178 (415.)

Taking up these reasons somewhat out of their order, it is submitted:

1. A construction which requires ignorance to be imputed to congress, *in 1871*, of the geography of Minnesota, then quite well known; or of the lines authorized by its own previous legislation *in pari materia*, which is referred to in the act; or of the line running westward from Crow Wing, which is specially mentioned in the act, and of which line a plat had been filed in the interior department in the autumn of 1869, and had been the subject of protracted correspondence with that department until late in 1870—is one not lightly to be adopted. The act should surely not be given less effect as showing knowledge and approval of the location of 1869 than the court, at a later stage in its opinion,—Record, 184 (418,)—gives it as showing congressional knowledge

and approval of the withdrawal, made October 12, 1870, by the land department in favor of plaintiff's grant—a matter in no way referred to in the act and quite foreign to it.

2. It is true that the road as relocated in 1871 and as afterwards built does not literally "intersect" the Shepard line of 1869, (Exhibit 7,) though the line as located in 1871 (Exhibit 6) runs within $15\frac{3}{4}$ miles of Otter Tail Lake. Record, 265 (621.) It is also true that the crossing of plaintiff's and defendant's constructed lines at Glyndon is some 30 miles west of the line of 1869.

But the Northern Pacific Co. cannot object to this "departure" as defeating or limiting its grant, for (1.) The departure was made before it had acquired vested rights by the filing of its map of definite location. (2.) The Northern Pacific Co. itself procured the passage of the act of March 3, 1871, and directed the location. If its grant was "defeated or limited" by the recognition in the act of "the line of the original grant," or by any departure from that line at and beyond Otter Tail Lake, that company cannot complain. *Volenti non fit injuria.*

3. The joint resolution of July 12, 1862.

The point of intersection of the 10th standard parallel and 4th guide meridian is four miles north of the 40-mile limits of the plaintiff's "Minnesota Division" as located and constructed. Map, Exhibit 6. None of the lands pertaining to that portion of the St. Vincent Branch thus vacated could by any possibility enure to the Northern Pacific Co. And if this point of intersection remained until March 3, 1871, a necessary point on defendant's St. Vincent Branch, still the State of Minnesota had on July 2, 1864, and at all times a grant, paramount to that of plaintiff, for a line traversing the entire 40-mile limits of its "Minnesota Division" as located and built.

By naming this point of intersection Congress did not intend to fix it as a point on the Branch Line.

The resolution must be read with the act of 1857, keeping in view the purposes of the act, and the construction must be on the whole act and resolution and not of a solitary expression.

The act of 1857 manifests no wish on the part of congress for a road to this point of intersection. Its purpose is to aid a branch to the navigable waters of the Red River of the North. As in case of the other lines aided by the act, the route and terminus were wisely left, within wide limits, to the judgment of the territorial legislature, with its superior knowledge of the country and of the needs of the people of the territory. There is nothing to show that in 1862 congress had changed its purpose, or that it was unwilling to trust the legislature of the state as it had trusted that of the territory. In 1862 as in 1857 the main purpose of congress in the grant for the Branch Line was for a line to the navigable waters of the Red River, the highway of travel to and through the British Possessions, whose only outlet then and for years afterwards was through Minnesota. Neither this nor any other useful purpose could have been served by a railway going into the forests and morasses at or near the intersection of the parallel and meridian and stopping there. If congress knew the country, it knew that such a road would be financially impracticable and of no use when built. If it knew the country, it knew that a railroad from Crow Wing to St. Vincent by way of the point of intersection was financially impracticable even with a land grant; that it would fail of one great purpose of such grants *to the states*, viz., the opening for settlers a country fit to settle in; and that the natural and only feasible route to St. Vincent on which a road could be built, and would be of any use when built, was on the route from Crow Wing westerly to the Red River valley and thence down the valley—the route of the well-

known trail that had been always used for travel and traffic.

If Congress did not know the country, it could not have intended to make this arbitrary point a necessary point on the line even though the requirement should defeat the whole purpose of the grant. Nor could it in such case have intended to take away from the state the discretion as to location which it had committed to the territory.

On the other hand the purpose of congress, and the interests of the state and of the United States as a land-owner and a government would have been admirably served by a line following the natural and accustomed highway of travel westwardly from Crow Wing to the Red River Valley at a point 12 miles south of Glyndon, or between such point and Glyndon, (on the very line of plaintiff's "Minnesota Division,") and then northerly down the valley striking the river at the 10th parallel—the north line of town 140, or at any other point between that and St. Vincent. The river is navigable not only to town 140, but also to Moorhead (in town 139, range 48,) though for much of the year the head of steamboat navigation is at Grand Forks, at the mouth of the Red Lake River, opposite town 151, range 50.

In such case all of the line north of town 140 would be north of the parallel and west of the meridian, and in a popular and not wholly inaccurate sense of the word would lie northwesterly from the intersection of the parallel and the meridian.

True, with such a line more land would be taken by the grant, and better land, than by a direct line from Crow Wing to St. Vincent. But the grant would be no greater per mile. For its larger grant congress would get more miles of road, would open up a larger and far better country for settlement, and (if such a consideration can be supposed to have had weight) would have had more land to sell at double minimum price, and some prospect of selling it.

Far better in the case of the joint resolution than in the

case of the reference to "the line of the original grant" in the act of March 3, 1871, can it be said: "The description may have resulted from congressional ignorance of geographical facts. As all that was sought was description" of the extent —not necessarily the precise location—of line for which the grant was vacated, "anything that would make that plain was in order, and should not be carried beyond the mere purpose of description."

And in 1862 congress doubtless knew far less of northern Minnesota than in 1871.

The joint resolution, so far as it made the point of intersection a point on the line, was nullified by the act of March 3, 1865, § 9.

The language of the section is significant. It applies the act to "that portion of the line authorized to be vacated by the joint resolution approved July 12, 1862, entitled," etc., "*as though said joint resolution had not passed.*" This part of the resolution is not repealed, but nullified, is to be treated as never existing, and the rights of the state in the St. Vincent grant are to rest solely on the acts of 1857 and 1865, as though there had been no joint resolution—no mention of the parallel or the meridian. Hence, if the resolution, while it existed, required the line to go to the point of intersection, the act of 1865 nullified that requirement *ab initio*.

And therefore it is no objection to our position that the act of March 3, 1871, recognized and made valid (if it was not so before) a line from Crow Wing westwardly to the Red River valley and thence north to St. Vincent, that our claim "is obviously inconsistent with the act of 1862."

Record, 178 (415.)

FOURTH.

The act of March 3, 1871, does not make a new grant, but provides for the alteration of the lines for which the "original grant" was made, and continues such original grant in force for the lines as altered.

This was the conclusion of the secretary of the interior, who held "that the act of 1871 is an amendment of the act of 1857, and purports to alter the line of the road merely, and should be read as if inserted in that act." Record, 287 (657.)

And this was the judgment of the supreme court of Minnesota in *Nash* v. *Sullivan*, 29 Minn. 206.

This construction alone is consistent with the language of the act and the circumstances of its passage.

I. The Language of the Act of March 3, 1871.

The act does not profess to be principally a *granting* act, still less an act revoking entirely an existing grant and making a wholly new grant.

The purpose expressed in the act is succinctly stated in the title. It is not "an act revoking the grant heretofore made to the St. Paul & Pacific Railroad Co., and making a new grant," or "making a new grant for new lines."

It is not "an act making a grant to the St. Paul & Pacific Railroad Co., in consideration of its relinquishment of its subsisting grant."

It is "an act authorizing the St. Paul & Pacific R. Co. to change its line," (for which it has a subsisting grant,) "in consideration of a relinquishment of lands,"—*not* a relinquishment of its entire land grant, to be replaced by a new one, but *a relinquishment of certain of the lands belonging to that grant.*

2. In the act itself are not found the granting words invariably found in every act making a new and original and independent grant—"there is hereby granted," or any similar words.

And there are not found any words revoking *the whole* of the existing grant, or requiring the relinquishment of *the whole* of the existing grant.

And there are not found any words making a wholly new grant for *wholly new lines*, or revoking or requiring the relinquishment of a subsisting grant for *the entire line or lines* for which such grant was made.

The principal purpose of the act, as expressed in it, is to authorize the relocation of *part* of *a line* having an existing grant, and as an incident to such relocation, it shall be "with the same proportional grant of lands, to be taken in the same manner along said altered lines as is provided for the present lines by existing laws."

3. That congress did not intend to make a new grant but merely to amend the existing granting acts is evident from this: After authorizing an abandonment of the Lake Superior line and a change of location of *part* of the St. Vincent line, so that the company, instead of building from Crow Wing, might build from St. Cloud "to the line of the original grant," it imposes the condition, "provided, however, that *this change*" (i. e. the abandonment of the line to Lake Superior and that part of the St. Vincent line between Crow Wing and Otter Tail Lake, and the location of the 8 miles from Crow Wing to Brainerd) shall in no manner enlarge *said grant*"—i. e. the grant made by the acts of 1857 and 1865, which is treated not as revoked but as still subsisting, and requiring a proviso that it shall not be enlarged by a relocation of part of the lines for which it was made.

Congress assumes that "the line of the original grant" extends westwardly from Crow Wing to and beyond Otter Tail and Rush Lakes, and authorizes the company to build from

St. Cloud to an intersection with that line. But it does not undertake to deal with that part of "the line of the original grant" which lies beyond Otter Tail and Rush Lake. It does not require that part of the line to be "abandoned." On the contrary, that part of the line is not to be affected. Whatever was "the line of the original grant" beyond Otter Tail or Rush Lake remains such—recognized but not changed. The only change contemplated or provided for in "the line of the original grant" from Crow Wing to St. Vincent is in the point of divergence from the Mississippi river, so that instead of leaving the river at Crow Wing and running to a point near Otter Tail or Rush Lake, it may leave the river at St. Cloud and run thence to such point, and thence to St. Vincent on "the line of the original grant," the same line which congress assumed was open to the company to locate and build on if no change should be made.

And so the line from St. Cloud to Crow Wing remains as it was under the acts of 1857 and 1865, the company being authorized, however, to extend it eight miles northeasterly, "to Brainerd, to intersect" (i. e. to connect) "with the Northern Pacific railroad."

The two things which congress assumes that the company was not already authorized to do, and authorizes it to do, were to locate and build from Crow Wing to Brainerd and from St. Cloud to a point at or near Otter Tail or Rush Lake.

4. The position that the act authorizes entirely new lines instead of a mere alteration of existing ones, and revokes the former grant and makes a new one, is inconsistent with other provisions in the act.

If the act revokes the grant for that part of the line from Crow Wing which is not altered, it must be on the ground that it revokes *the entire grant* made by the acts of 1857 and 1865, as well for the line from St. Cloud to Crow Wing as from Crow Wing to St. Vincent. And the circuit court in effect so holds. Record, 177–8 (415.) That is, in order to make

a grant to aid the company to build the eight miles from Crow Wing to Brainerd, congress revokes the grant from St. Cloud to Crow Wing, and makes an entirely new grant for a road from St. Cloud to Crow Wing on the line of the original grant, and thence on for eight miles to Brainerd.

Again, it is as true of the St. Vincent as of the Brainerd branch that the act does not in terms authorize a new line *instead of* an existing one, but a mere *alteration* of *part* of an existing one. It says that the company "may so *alter* its branch lines that instead of constructing," etc., "it may locate and construct," etc., "with the same proportional grant of lands, to be taken in the same manner along said altered lines, as is provided for the present lines by existing laws."

After the change the lines would be "altered lines," and not wholly new or substituted lines. So far as the line was one located, or which might have been located, or which congress assumed might have been located, should the authority to change not be acted on, it is not even "altered." Only the portion between the Mississippi river and "a point of intersection with the line of the original grant" is "altered." Only as to this can it be said that the line is a "substitute" for anything. And as a "substitute" this portion is of course put into the place of the original just as if named in the original grants of 1857 and 1865—except of course as against those, and only those, who have in the mean time acquired paramount rights or equities against the United States, a class which would not include the Northern Pacific Co.

5. Again, "with the same proportional grant to be taken in the same manner along said altered lines as is provided for the present lines by existing laws"—that is, as is provided and will continue to be provided by the acts of March 3, 1857, and March 3, 1865, for all that part of the lines which is not authorized to be altered—all that part between St. Cloud and Brainerd and beyond Otter Tail and Rush lakes. And "the same proportional grant" is transferred—

a new grant is not made—from that part of the old line which is abandoned to the portion of line authorized in lieu of it.

The grant along the altered lines is to stand on the same footing, to be "the same proportional grant," with that which the whole of the existing lines if unaltered, and the unaltered portion of them in any event, are recognized as having and continuing to have. So that even along "said altered lines" the grant is to be regarded as made by "existing laws." And for "the line of the original grant" beyond Otter Tail and Rush lakes, and between St. Cloud and Crow Wing, whatever "is provided by existing laws" will remain provided by the same laws, whether other parts of the line are changed or not.

"To be taken in the same manner, along said altered lines," etc. This simply provides how "the same proportional grant" for that part of the lines between St. Cloud and the point of intersection with the line of the original grant, and between Crow Wing and Brainerd, are "to be taken"—a subject regulated by various "existing laws," by the acts of March 3, 1857, and March 3, 1865, and the important act of July 13, 1866. (14 U. S. St. 97; 2 U. S. Land Laws, 813.)

6. Congress intended the grant for so much of the line as was "altered" (and only for such part is any grant made) to depend on a surrender or release of the lands along that part abandoned by the alteration. But why should it require a surrender along that part of the line that was not altered—a surrender to be accompanied by a re-grant of the same lands by the same act? This would be of no use to the United States, and might be highly prejudicial to the company. Suppose the company had not accepted the power given it to make the alterations. It would have had a right to build from any point between St. Cloud and Crow Wing to Lake Superior, and it would have had a right to build from

Crow Wing *via* Otter Tail and Rush lakes to St. Vincent, and for these lines it would have had a grant under the acts of 1857 and 1865, and the joint resolution of 1862—a grant beyond doubt paramount to that of the Northern Pacific Co. If it accepted and used the authority to alter its line, the line beyond Otter Tail and Rush lakes would be the very same line it would have been authorized to build if it had not accepted and used the authority. How then can it be said to have "abandoned" that line? How can that be called an "abandoned" line? Why should the company be required to execute releases of land along this "abandoned" line, that the same may be "immediately restored to market," and as soon as restored to market become subject to the grant by reason of the definite location made in 1869—if a partial location can give any rights.

II. The Situation at the time of the Passage of the Act of March 3, 1871.

Our construction of the terms of the act is confirmed by the situation at the date of its passage—the facts existing and known to congress, or assumed by congress to exist.

1. Congress, of course, had in mind the grants with which it was dealing.

It knew of the acts of 1857 and 1865, and that under them the St. Paul & Pacific Co. had a grant, which was paramount to plaintiff's on any construction of the act of July 2, 1864.

It knew that the grants of the two companies, however their lines might be located, must inevitably conflict.

It knew that under the subsisting provisions of the joint resolution of July 12, 1862, and by section 9 of the act of 1875, the state of Minnesota had a 10-section grant, prior to plaintiff's, for a line from any point on the St. Vincent Branch above St. Cloud to the waters of Lake Superior. And it knew that by the state legislation of March 6, 1863, this

grant had been conferred on the St. Paul & Pacific Co., and its route designated as "by way of Duluth to the navigable waters of Lake Superior at or near the mouth of Pigeon River." Record, 352 (770.)

It knew that Pigeon River from its source to its mouth forms part of the northern boundary of the United States. Congress therefore knew that there must be a conflict between this grant, however located, and that to plaintiff, in which conflict the St. Paul & Pacific Co., having the paramount grant, must prevail.

It knew that this Lake Superior Branch might be located from Crow Wing to Duluth.

It knew that the St. Vincent Branch had been located from Crow Wing westwardly by way of Otter Tail and Rush lakes.

It must have known this if (as the circuit court holds)—

It knew of plaintiff's line of general route through Minnesota as shown on its "Amended map of General Route," (Exhibit 2,) and of the withdrawals ordered August 13, and October 12, 1870. Record, 184 (418.)

It knew and refers to the fact that the plaintiff contemplated locating and building its road from Thomson Junction (22 miles west of Lake Superior) to Brainerd, a point about 15 miles south of the line of general route, and about six miles north of Crow Wing.

It knew that such line to Brainerd was on a route and within the land limits of a line which the St. Paul & Pacific Co. was authorized to build from Crow Wing to Pigeon River *via* Duluth.

It knew that the Northern Pacific line westward from Brainerd would be on the route of the Shepard line located by the St. Paul & Pacific Co. in 1869, and on a route which congress recognized as and assumed to be the line of the St. Paul & Pacific Co.'s grant.

It knew that in any case, and however the lines might be located, the plaintiff would be a large loser in its conflict

with the St. Paul & Pacific Co.'s paramount grants. And it knew that by thus locating from Thomson to near Rush Lake and beyond on the St. Paul & Pacific Co.'s route, the plaintiff would lose from its grant the amount of land that had been granted to the St. Paul & Pacific Co. for these lines and could get no indemnity therefor.

2. Congress therefore knew that by the change proposed by the act, the plaintiff would in effect acquire a grant for the line it desired to build from Thomson to Brainerd and beyond, and that its conflict with the prior grants of the St. Paul & Pacific Co., in which it must be a loser, would be reduced to a conflict arising from a single crossing.

And it knew that all these beneficial results would accrue to the Northern Pacific Co., while the St. Paul & Pacific Co. should retain for its altered line the same priority of grant it then held for its original line. And it knew that, with this priority preserved, the effect of the whole act so far from "defeating or limiting" the plaintiff's grant, as assumed by the circuit court,—Record, 178 (415)—would be to materially enlarge it.

And if, as the circuit court holds, "congress may be fairly regarded as standing indifferent between all roads," no reason can be given—certainly none has yet been advanced—why congress, in addition to bestowing all these benefits on the Northern Pacific Co., should wish still farther to endow it at the expense of the St. Paul & Pacific Co., and deprive the Minnesota state system of railroads, a large part of which (including the "main line" from St. Paul to Breckenridge and that part of the branch line between St. Anthony and St. Cloud or Sauk Rapids) had been built, of its existing priority of grant, in favor of a company of adventurers, who, with a grant of unparallelled dimensions, had not as yet even located a single mile of road.

3. On the construction we contend for the Northern Pacific Co. loses nothing and gains much by the act of March

3, 1871, and congress deals fairly with both companies, *disturbing the existing situation only so far as is necessary* to enable the Northern Pacific Co. to build *via* Brainerd, and avoid the useless expense of two parallel roads in the immediate neighborhood, by changing the route of one of them to a location where such proximity would be avoided. This is what congress aimed to do, if the state of Minnesota was willing. The doing of it did not require any change in the relative priority of the grants, and the court would not be justified in imputing to congress a wish to transpose the priority of the existing grants unless such intent should appear clearly on the face of the act.

4. Of course, if congress put upon the Northern Pacific grant the construction for which we contend, there is no basis whatever for holding that it intended by the act of March 3, 1871, to take away the priority of defendant's grant.

The Withdrawal in favor of Plaintiff's Grant.

The circuit court holds that, by the terms of the act of March 3, 1871, the *exception* in the acts of March 3, 1857, and March 3, 1865, of "all lands heretofore" (*i. e.* before the date of those acts) "reserved by any act of congress or in any other manner by competent authority," is imported into it. But the language relied on for this ruling ("with the same proportional grant of lands, *to be taken in the same manner* along said altered lines *as is provided* for the present lines *by existing laws*") provides merely for the manner of taking, as already pointed out. It is clearly insufficient to make an *exception*.

The circuit court accordingly held that congress *intended*, in the act of 1871, to *except* from the St. Paul & Pacific grant all the lands embraced in the secretary's order of withdrawal of October 12, 1870, on the filing of plaintiff's "amended map of general route."

And this ruling rests on the position that the secretary *intended* by his order to withdraw the lands from the operation of defendant's grant, and that it was authorized by the act of July 2, 1864; and that, if not so authorized, it was a withdrawal in fact, and therefore the lands were excepted from the act of March 3, 1871, in accordance with the *Des Moines River Grant Cases*.

1. But the act of July 2, 1864, does not provide for a withdrawal by act of the secretary. The act itself makes the withdrawal. The action of the secretary is merely by way of notification of the withdrawal made by the statute—"precautionary notice to the public"—and not itself intended to be, or operate as, a withdrawal.

Buttz v. *Northern Pacific R. Co.*, 119 U. S. 55, 73.

It is to be presumed that the secretary, in giving a direction which amounted merely to notice of what lands were reserved by the act, did not mean to make a reservation inconsistent with that made by the act, and his order to the local land-officers must be construed in the light of this presumption. He directs them "to withhold from sale, pre-emption, homestead and other disposal." Record, 281 (645–6.) If this was intended to withhold the lands from the operation of defendant's grant, it must be that while "otherwise disposed of," in the Union Pacific act, and "otherwise appropriated" in the act of July 2, 1864, cannot be construed as including "granted," the words "other disposal," in the same connection in the secretary's order, do include "grant." But in this case the secretary was merely directing the local officers to withhold from such "other disposal" as, except for such direction, they might make under the general land laws. The secretary could hardly have meant to direct the local officers to withdraw these lands from the operation of any grant of them that congress might see fit to make prior to

definite location of the road, and thus defeat the intention of congress expressed in the act.

2. In the *Des Moines River Grant Cases*, effect is given to the withdrawal as bringing the lands withdrawn within the exception of a subsequent grant, (which excepted "all lands heretofore reserved by any act of congress or in any other manner by competent authority," etc.,) on the ground that congress, when passing the later act, was *expressly* informed of and had in mind the withdrawal that had been made by the secretary, and *meant* to except the lands that had been *in fact* withdrawn. There the grant was uncertain in its terms. The secretary made a reservation on a construction of an ambiguous grant, and believing the reservation to be within his jurisdiction and valid. A serious and prolonged conflict arose among the executive officers of the government, which lasted eight years, and also litigation in the courts. And therefore congress, having all these facts "specially in mind," and intending not to add to the uncertainties of the case, deliberately excepted the lands from the later grant, intending "to reserve them for future disposition if the title under the first grant should turn out to be defective."

Wolcott v. *Des Moines Co.*, 5 Wall. 681, 687–8.

The Des Moines River grant, by the act of August 8, 1846, (9 U. S. St. 77; 2 U. S. Land Laws, 757,) contains no provisions as to what reservation shall be made to protect the grant. And it may be conceded that in case of such a grant, (a grant of lands unsold, etc., at the date of the act—not at some future date,) a general withdrawal for the purposes of the grant will bring the lands so withdrawn within the exception, contained in a later grant, of "all lands heretofore reserved," etc. This would of course rest on the presumed intent of congress (1) that the lands should be withdrawn, for such intention alone gives the secretary power to act; and (2) that lands so withdrawn should not be

intended to be embraced in a subsequent grant, unless the grant should so provide either expressly or by necessary implication.

3. But the terms of the Northern Pacific grant show that congress did not intend that a withdrawal of lands on filing the map of general route should withdraw the lands from grants which congress contemplated the propriety of making at any time down to the definite location of the road.

And that grant shows that it was *not* the intention of congress that the secretary, under a general power, (resting on the presumed general intent of congress in making floating grants,) should withdraw lands from the operation of the future grants which it contemplated making, and, by the use of the words "not granted," made provision for making. The act does not leave it to the secretary to make a withdrawal in the exercise of the general implied power. It does not leave him to act on the general intent of congress in making land grants. It expresses the particular intent of congress in this case, and specifies in detail to what extent and from what the lands shall be withdrawn. They "shall not be liable to sale or entry or pre-emption," but shall be subject to congressional "grant." The act itself makes the withdrawal, and excludes any implied power in the secretary to make a different withdrawal or one of wider scope.

4. And hence it is plain that the withdrawal in this case is to be tried, *not* by the rule claimed to have been established in the *Des Moines Improvement Cases*, but by the rule laid down in the recent utterance of this court in *Kansas Pacific Ry. Co.* v. *Dunmeyer*, 113 U. S. 629, already mentioned. There, as here, the act specified from what the lands should be withdrawn. There (and, as it is claimed, here) the secretary made a withdrawal broader than the act. And there it was held that the withdrawal was ineffectual in so far as it went beyond the act.

In the *Dunmeyer Case*, the original act directed the secre-

tary to withdraw the lands "from pre-emption, private entry and sale." The amendatory act directed him to withdraw "from sale." In the opinion of the circuit court the *Dunmeyer Case* is considered to have decided only "that where an act directs the secretary of the interior, upon the filing of a map of general route, to withdraw certain lands from 'sale,' *the filing of the map* has no further force than to carry into effect the law, and does not operate as a withdrawal from homestead and pre-emption." Record, 184 (418.) That is to say, the court treats that case as if it turned merely on the effect of the filing of the map, and as if the case did not show any withdrawal made or ordered by the secretary.

Herein it would seem that the court fell into an error. Reference to the report of the case in the supreme court of Kansas, (24 Kan. 725,) shows that "on July 11, 1866, the company filed its map. On July 14, 1866, the commissioner of the general land-office wrote to the local land-officers to withdraw the lands from *sale, pre-emption and homestead entry*, which communication was received by them on July 26th, and on that day the proper entries were made upon their plats and maps to indicate such withdrawal." The Kansas supreme court treats such withdrawal as the act of the secretary, and so does this court, saying (p. 636:) "What if he (the secretary) makes an order, *as in this case?*"

In the supreme court of Kansas, it was held that the withdrawal did not take effect until the receipt of the order at the local land-office, on July 26th, the day after Miller's entry, and that such entry, being thus made before the withdrawal, was not affected by it. But in *Van Wyck* v. *Knevals*, 106 U. S. 360, a withdrawal was ordered March 26, 1870. On April 8th the order was sent to the local land-officers by letter which they did not receive until April 15th, and after defendant had, on April 13th, made his entry. It was held that the company's rights under the order did not depend on the date of its receipt by the local land-

officers. And to the same effect is *Walden* v. *Knevals*, 114 U. S. 373.

Hence this court, in the *Dunmeyer Case*, must have considered and did consider that there was an actual withdrawal by the secretary (which took effect when made at Washington 11 days before Miller's entry) from "sale, pre-emption and homestead entry," and the question considered and decided was whether such withdrawal in fact was effectual as against Miller's entry. And such withdrawal in fact was held to be ineffectual in law, because the act specifically authorized a withdrawal from sale, and thus in effect prohibited a withdrawal from other disposition, even under the general land laws.

A fortiori, in this case, the withdrawal *by the act itself* from "sale, or entry or pre-emption" prohibits the secretary from withdrawing them from the operation of the future grants which congress, in the act itself, gave notice that it would probably make—a notice which was repeated in the joint resolution of May 31, 1870.

5. It is true that "here there was no express direction of withdrawal." Record, 184 (418.) But there was more—a withdrawal by the act itself. And hence the conclusion that "the general powers of the land department were not limited" is faulty.

6. In the exception held to be imported into the act of March 3, 1871, from the acts of 1857 and 1865, two kinds of reservation are mentioned in the alternative: (1) "by any act of congress;" (2) "in any other manner by competent authority." These are exclusive of each other. Where an act of congress withdraws the lands, they are in the first class, and cannot be put into the second. Here the act of congress reserves the lands, and for certain purposes. If *that* reservation conflicted with a grant having its origin in the act of 1871, such lands would be excepted from it. But it does not so conflict, being a reservation from "sale, or entry, or pre-

emption" only. The lands thus belonging to the first class cannot, by ignoring the act of congress, be put into the second class,—*i. e.* of lands reserved *not* by act of congress, but in some other manner by competent authority.

Again, the withdrawal by the secretary, if intended to be broader than the act, was not a reservation "by competent authority," as has already been shown.

7. The circuit court further says:

"The withdrawal was in fact made. It was in existence and a public record in the offices at Washington at the time the act of 1871 was passed. Congress may be presumed to have acted with knowledge of this fact. If it had intended to stamp with the seal of disapprobation this act of the land department as a usurpation of authority, it could easily have expressed that intent in clear and unmistakable terms. On the contrary its language seems rather an approval of the action of that department, and to make a grant subject to the reservations created thereby."

Record, 184 (418.)

But why should congress be expected to disapprove of that withdrawal, and why should it express that disapproval, under penalty of having its grant partially defeated by such withdrawal?

Congress knew that by the terms of its grant to the Northern Pacific Co., and of the act of 1871, the latter would take precedence of the former. If we are right in our position that the act of 1871 is to be read as amending the acts of 1857 and 1865, and not as a new and independent grant, or if we are right in our position that the act makes a new grant only for those parts of the altered lines between Crow Wing and Brainerd and between St. Cloud and the line of the original grant,—then the withdrawal, whether right or wrong, could not interfere with the purpose of congress. In the first case a withdrawal in 1870 could not affect lands granted in 1857 or 1865. In the second case, it could not affect the line from Crow Wing to Brainerd or that from St. Cloud to

"the line of the original grant," for neither of these is within 20 miles of the line of general route on either of the maps filed in 1870, and the grants for them would be unaffected by the withdrawal.

And if the St. Paul & Pacific Co. should not accept the proffered privilege of altering its lines, the withdrawal could not possibly affect its rights in any way.

Again, the order of withdrawal, properly understood, was not in itself objectionable—certainly not prejudicial to the St. Paul & Pacific Co. It in effect directed the local land-officers not to make any disposition of the lands, and as those officers could make dispositions only to individuals under the general land laws, the order withdrew the lands from such dispositions only. Suppose that the St. Paul & Pacific Co., proceeding under the acts of 1857 and 1865, had located its line across the withdrawal limits. Certainly the order to the local land-officers would not have deprived it of any lands, for the reason (among others) that the limits of its granted lands would be fixed, and the selections of its indemnity lands would require approval, *not* by the local land-officers, but by the department at Washington; and for the further reason that the order would be construed as not intended to withdraw any lands from the operation of congressional grants or from any proper action by the government. And there seems to be no reason for presuming that congress considered that such withdrawal would in any way affect the priority which it recognized and intended to preserve for the St. [illegible] Co.

ons in the Act of March 3, 1871.

1. Neither the United States nor the state has ever objected that the act was not "in accord with the state legislation," or that "proper releases" were not filed. It is not open to plaintiff to make the objection. The condition of accord

See p. 66, opposite.

Effect of Vacation of Withdrawal on Lands in the Common Indemnity Limits.

1. So far as affects land within the common indemnity limits of two companies, the fact that they are embraced in a withdrawal for one company, though it be made for the company with the elder grant, and made upon the line of definite location, will not preclude the other company from selecting them as indemnity lands. And the company first selecting acquires the better right.

St. Paul Railroad v. *Winona Railroad*, 112 U. S. 720, 732.

Such is the case as to *all* the lands in Schedules C and D which are outside the 10-mile limits of the defendant's line.

2. On the filing of the plaintiff's map of definite location, (November 21, 1871,) the withdrawal ordered October 12, 1870, was vacated as to all lands lying more than 20 miles from such located line.

Record, 333–4 (735–7.)

Certain lands included in that part of the withdrawal thus vacated were selected by and patented to the state for the St. Paul & Pacific grant. Such lands (being part of the lands in Schedules C and D) are taken from defendant and awarded to plaintiff. This is contrary to the law as settled by repeated decisions of this court.

Even though they had not been withdrawn, the St. Paul & Pacific Co. could not have taken *such* lands as *granted* (as distinguished from *indemnity*) lands, for they lie more than 10 miles from its line as located. It must take them, if at all, as *indemnity* lands, and *by selection*. Conceding that lands withdrawn October 12, 1870, could not have been taken as *granted* lands under a grant made March 3, 1871, even though the withdrawal were afterwards vacated, (*Leavenworth, etc., R. Co.* v. *United States*, 92 U. S. 733, 746–7,

748–9,) yet the rule is entirely different in respect of *indemnity* lands, to be selected beyond the place limits of the grant.

As the company's title to *such* lands accrues only on *selection*,—vests on and dates from selection,—it is enough that such lands are free from any reservation *at the time of selection*. It is the condition of the lands *at that time*, and not at the date of the granting act, that determines whether they are open to selection. Therefore, even though such lands were "reserved" at the date of the granting act, yet, if they thereafter cease to be reserved,—if the reservation is vacated,—they may be selected and taken as indemnity lands. This was expressly decided in

Ryan v. *Railroad Co.*, 99 U. S. 382, 387–8.

And see *St. Paul Railroad* v. *Winona Railroad*, 112 U. S. 720, 731–2.

As to these lands—and indeed as to all lands within the common indemnity limits—the decree must be reversed or the cases just cited must be overruled.

with state legislation was wholly for the benefit of the state, which could waive it, and not at all for the benefit of plaintiff, which had not located even its "Minnesota Division."

Baker v. *Gee*, 1 Wall. 333, 337.
Grinnell v. *Railroad Co.*, 103 U. S. 739, 744.

And so of the condition requiring releases. That was solely for the benefit of the United States, and in no way concerned the plaintiff. "The United States are not complaining, and no other party has a right to complain." *Baker* v. *Gee*, *supra*.

2. The Northern Pacific Co. has precluded itself from asserting that the act was not in force at least as early as November 21, 1871, when its map was filed.

The Northern Pacific Co. located the road from St. Cloud to St. Vincent in the summer of 1871, and in the spring and summer of that year it negotiated the St. Vincent Extension mortgage bonds on the representation (among others) that the St. Paul & Pacific Co. "is authorized to construct" the line from St. Cloud to St. Vincent, which could only be true if the act of March 3, 1871, was then in force. Record, 429 (911–2.)

If the act were not in force on November 21, 1871, the Northern Pacific Co. could have no claim to any lands on the line of the Shepard survey. But it "has received patents for or is claiming under its congressional land grant all the land in odd numbered sections within 20 miles on each side of its road as located and constructed in Minnesota to the same extent as if no grant had ever been made to the state of Minnesota to aid in the construction of any of the other lines of railroad mentioned in the pleadings."

Exhibit O 1; Record, 585 (1202.)

It cannot be allowed to claim and receive lands on one part of its line on the ground that the act was in force, and lands

on another part—these lands in dispute—on the ground that it was not in force, on November 21, 1871.

3. If the act was not in force on November 21, 1871, still the location of the 104 miles of the St. Vincent Extension in the Red River Valley along which most of the lands in dispute lie was a location that was authorized by the acts of 1857 and 1865, without aid from the act of 1871.

The act of March 3, 1871, was in accord with the state legislation.
This was expressly decided in

Nash v. *Sullivan*, 29 Minn. 206.
St. Paul, M. & M. Ry. Co. v. *Greenalgh*, 26 Fed. Rep. 563.

That the line from Crow Wing to Brainerd was in accord with the state legislation is not disputed in the pleadings or the evidence.

The line from St. Cloud was in accord with a legislative act of February 6th, 1864, by which the St. Paul & Pacific Company was given the option to relocate "the Branch from Saint Anthony to the Red River of the North, so as to run and construct the same from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, and it shall not be required of the said company to construct and maintain the said branch road to or by the way of Crow Wing." Record, 353 (773.)

So far as the "St. Vincent Extension"—the line from St. Cloud to the line of the original grant and thence to St. Vincent—is concerned, the act of March 3, 1871, was, upon its passage, "in accord with the legislation of the state of Minnesota."

That the vacation of the grant for the Lake Superior Branch was in accord with the state legislation is evident from the numerous acts, based on the act of March 3, 1871. Record, 451 (953)—457 (966.) It was not essential that that act,

at the date of its passage, should be in accord with state legislation. It was enough that the state should shape her legislation so as to accord with it. The sole purpose of this condition was that the grants should not be changed against the wishes of the state. These conditions may well be construed to be conditions subsequent. But even if conditions precedent, a change of the state legislation to conform to the grant would give it effect from its date as against the Northern Pacific Company, which had then no rights which would be invaded or impaired had the act been absolute and without any condition.

And there was nothing in the act that was not in accord with state legislation at the date of its passage. The state had, it is true, accepted the grant for the Lake Superior Branch, and (so far as could be done under the acts of congress) had turned it over to the St. Paul & Pacific Co. That company had located no part of the line, and by act of March 7, 1870, the state had assumed to resume the grant and transfer it to the Minneapolis & St. Cloud Co. It does not appear that that company ever accepted it, and it does appear that that company never located a rod of road, or took any steps whatever towards locating or building any railroad. It had no rights which could be impaired by a revocation of the grant by congress, for the grant was in the state, which by sections 5 and 6 of the act of March 3, 1865, could dispose of the lands only on construction of road. Now, congress knew that the state of Minnesota had accepted the grant, and knew, of course, that the state had not released but still held it, and, in a certain sense, this act of March 3, 1871, must have been, as congress well knew, not in accord with existing legislation by which the grant had been accepted. To say, therefore, that congress meant that the act should not take effect unless in accord with existing legislation, meaning thereby such legislation, would be an unwarrantable construction. But if, prior to the act, any company under au-

thority from the state had located the line and constructed a part of it so as to become *entitled* to lands, then the act would not be in accordance with the state legislation, and to prevent a discord with *such* legislation must have been the purpose of congress, if the condition has any reference to existing legislation. No such state of facts, and therefore no discord, existed at the date of the passage of the act of March 3, 1871.

The Condition as to Releases.

This requires "that *proper releases* shall be *made by said company,*" etc.

It is claimed in the bill that the state, by the act of March 7, 1870, had forfeited the right of the St. Paul & Pacific Co. to the grant for the Lake Superior Branch. Record 56 (154.) If this be so, then "said company" had no right to any lands along the abandoned line to Lake Superior of which it could make any release, and no such release was required by the act.

In regard to the line from Crow Wing to a point near Otter Tail or Rush Lake, the company had, in 1869, made a location. Thereby the state had acquired a title that might be released, and that title was held in trust for the St. Paul & Pacific Co. That company was to make a "proper release" of the lands along this line. What are the requisites of such a "proper release?" and who shall determine its sufficiency? The act does not require formal instruments of release. It does not say that releases shall be "executed." Evidently any act of the company which operates to divest it of any claim to the lands along this line from Crow Wing, and enables the Northern Pacific Company to claim them and the officers of the government to dispose of them to it, as public lands to which the United States has full title, especially if followed by such claim and disposition, acquiesced in by the St. Paul & Pacific Company and by congress, is a

good release, though not in the form of a deed at common law. Anything which has the effect of a release, and thus fulfils the intention of the act, is a "proper release."

This was effected by the resolution of the St. Paul & Pacific board of directors, adopted March 22, 1871, at the instance of the Northern Pacific Railroad Co.—Record, 344 (753;) by the mortgage of the line from St. Cloud to St. Vincent, and of the lands granted therefor by the act of March 3, 1871; by the location of the line of the road in conformity with the act; by the filing of a map of such location on November 18, 1871. The effect of these proceedings was that, at the time of the filing of the Northern Pacific Company's map, November 21, 1871, the lands along the abandoned line were lands to which the United States had "full title," so that they have, with the acquiescence of the state, the St. Paul & Pacific Co., its mortgage bondholders, and all others interested, been claimed by the Northern Pacific Company, and patented to it as lands which, on November 21, 1871, were free from any claim of the state or of the St. Paul & Pacific Company.

Acts which have such an effect—which have every effect that the most solemn deed of release could properly have—are certainly a "proper release," within the spirit of the act, especially when the nature of the interest of the company in those lands, under sections 5 and 6 of the act of 1865, is taken into consideration. They are certainly sufficient as against the plaintiff, which claimed and received the benefit of them as sufficient under the act.

On December 19, 1871, a formal release was filed in compliance with the demand of the interior department. This was not necessary to make valid the location made in that year, or the map which had been filed on November 18th. And if requisite to make valid any part of that location, this release made it valid *ab initio*, at least as against plaintiff.

The Filing of Defendant's Map and its Effect.

That the map of definite location of the entire line from St. Cloud to St. Vincent was filed with the secretary of the interior on November 18, 1871—three days before the plaintiff filed its map of a partial location, the map of its "Minnesota Division," is a conceded fact.

It is true that the secretary objected to accepting it until a formal deed of release was filed, and that he did not transmit it to the general land-office until December 20, 1871. At first he was also of opinion that the line did not go near enough to Otter Tail or Rush Lake, but on further reflection he was satisfied that this objection was not a substantial one. Record, 414 (882.)

As the location was in accordance with law, the secretary should have accepted the map when received by him. And his acceptance, when made, had relation to the date of receipt, and the map must be deemed to have been filed in law (as it was in fact) on November 18, 1871. The delay of the secretary could not be allowed to prejudice the rights of the company.

Van Wyck v. *Knevals*, 106 U. S. 360, 367.
Walden v. *Knevals*, 114 U. S. 373.

The question on what date is the map to be considered as having been filed affects only those lands outside the defendant's 10-mile limits and within plaintiff's 20-mile limits. The lands within its 10-mile limits the defendant takes by priority of grant, those outside of its 10-mile limits and within plaintiff's indemnity belts the defendant takes by priority of selection, independent of any withdrawal for it.

But on filing of the map of location of the St. Vincent Branch, on November 21, 1871, all the lands within 20 miles of the located line became at once reserved to fill the

grant. Therefore on November 21, 1871, when plaintiff filed the map of its "Minnesota Division," these lands were not within the description "not reserved." They had been reserved to fill defendant's paramount grant.

The reservation was effected by the 7th section of the act of March 3, 1865, providing that upon definite location "it shall be the duty of the secretary of the interior to withdraw from market the lands embraced within the provisions of this act,"—that is, the odd sections within 20 miles on each side of the line, for all these, though not presently granted, are "embraced within the provisions of this act."

Such withdrawal, though not vesting a title, (though the circuit court, by awarding to plaintiff lands withdrawn but not selected, would seem to have held otherwise,) prevents any of the odd sections from passing under plaintiff's grant, even if not needed to satisfy the defendant's grant.

Should the secretary omit to make the withdrawal, such omission does not impair the rights of the state and its beneficiaries nor defeat the expressed will of congress. In such case *the act itself operates as a withdrawal from the date of the filing of the map.*

Railroad Co. v. *Smith*, 9 Wall. 95, 99–100.
Van Wyck v. *Knevals*, 106 U. S. 360, 367.
Walden v. *Knevals*, 114 U. S. 373.

In this case, the secretary erroneously declined to accept the map until December 20, 1871, not for defects in it, but because he required to be informed as to other matters. Record, 413, (882.) On that day he transmitted it to the general land-office. The commissioner however did not order a withdrawal until February 6, 1872. Record, 416 (886), 291 (665.)

But, as decided in the cases cited, the order must be held to relate to the date of filing—November 18, 1871.

And not only does the act of March 3, 1865, reserve these

lands, but by the act of July 13, 1866, (14 U. S. St. 97; 2 U. S. Land Laws, 813,) it is enacted, (section 3:) "That all the land heretofore granted to the territory or state of Minnesota to aid in the construction of railroads, *shall be certified to said state by the secretary of the interior*, from time to time, *whenever any of said roads shall be definitely located.*" And while (by section 4) the state is forbidden to dispose of any of the lands "specifically lying in place on any division of ten miles of road, until the road shall be completed through and coterminous with the same," it is also provided "that *this provision shall not extend to any lands authorized to be taken to make up deficiencies.*"

Immediately on location the state is entitled to have certified all the lands to the full amount of the grant. And under the act of March 3, 1865, it is made the duty of the secretary to "indicate" them. *Kansas City, etc., R. Co.* v. *Atty. Gen.*, 118 U. S. 682, 687–8.

It is under this act of 1866 that the lands not coterminous with the 104 miles north and south of Glyndon were certified and patented to the state and by the state conveyed to the St. Paul & Pacific Company. These lands lie more to the southeast, and are between the 10 and 20 mile limits of that part of the located line.

The alleged Defects in Location and Construction of Defendant's Line.

The objections to the location as not conforming to the act of March 3, 1871, have already been disposed of. See pp. 44–5, *supra*. And the same argument disposes of the objection in the bill that the line was not anthorized by the St. Paul & Pacific Co., but was merely chosen by its engineers, and not ratified by its board of directors until December 13, 1871. Record 59, (159.) And in any case the question whether the line was authorized by the board cannot be

raised by plaintiff. If the company and the United States were satisfied, that was enough. Even if ratification were needed, the resolution of December 13, 1871, makes the location and map valid *ab initio*. Record, 345 (755.) *Omnis ratihabitio retrotrahitur*. And the act of congress of March 3, 1873, (17 U. S. St. 631; 2 U. S. Land Laws, 822,) recognizes the line as a valid location when made.

The plaintiff cannot be heard to object to deviations in construction from the located line, for—

1. That question is for the United States alone to raise. If it is satisfied, no one else can complain. Plaintiff is not injured, for the land limits are fixed and the lands taken along the line of definite location.

2. The plaintiff itself directed the construction and is responsible for any deviations.

3. The deviations are for allowable reasons and within permissible limits, as was held by the secretary of the interior. Record, 541 (1118)—544 (1123.)

4. Under the act of July 13, 1866, the state became entitled to have certified to it all the lands to the full amount of the grant, immediately upon the location of the road, and the state could hold them, without building a mile of road, until the United States enforced a forfeiture. And even a forfeiture declared and enforced would not aid plaintiff, for it would not make any of these sections lands "not granted" to the state, or "not reserved" for the state when the plaintiff filed its map.

SUMMARY.

I.

If, as we insist, the Northern Pacific Company—having shown no location of its entire line, but only of its "Minnesota Division"—has shown no valid location, then it can claim no title to any of the lands involved in either the original or the supplemental bill.

II.

And even if the Northern Pacific Company's fragmentary location be held valid, still that company is not entitled to recover the lands claimed in the original bill, or to retain those claimed in the supplemental bill.

Assuming the location of the "Minnesota Division" valid, the rights of the parties may be thus summarized, dividing the lands in the first instance into two classes, viz.:

1. Those within the ten-mile limits of the St. Vincent Extension.

2. Those without the ten and within the twenty-mile limits of the St. Vincent Extension.

(1.)

As to the lands within the ten-mile limits.

All these lands are coterminous with that part of the line between a point 12 miles south, and a point 92 miles north, of Glyndon. They are therefore along a part of the line the location of which, as located, was authorized, and the grant therefor made to the state, by the acts of 1857 and 1865.

The location of this part of the line, as shown on the map filed November 18, 1871, was valid whether the provisions of the act of March 3, 1871, for altering the lines, were in force or not.

If the location was valid, and the map properly filed, on November 18, 1871, then when the map of definite location of the "Minnesota Division" was filed on November 21, 1871, none of these lands were within the description of "lands not granted" at that date, and therefore were not within the grant to the Northern Pacific Co.

And even if this location had not been made and map filed until after the filing of the map of the "Minnesota Division," still the lands would not be within the Northern Pacific Co.'s grant, for

1. As to all lands within six-mile limits, the title on location would relate to the act of 1857, and could not be defeated by an earlier location of a later grant.

2. As to the lands between six and ten-mile limits.

(*a*) The act of March 3, 1865, was an amendment of the act of 1857, the whole grant becoming a grant of 10 sections by description, as of the date of the act of 1857. And whether as to the four sections the grant is of the date of 1857 or 1865, still, since the title which vests on location relates to the date of the act and cuts out intervening claims, and the act is to be read as if these sections had been specifically described in it, such lands, being lands granted prior to November 21, 1871, are not within the description of the Northern Pacific Company's grant.

(*b*) The map was *in fact* filed November 18, 1871. Even if other acts remained to be done to render this *de facto* filing a sufficient filing in law, when these acts were done, the filing became valid *ab initio*, and the location was complete and the map filed *in law as well as in fact* on November 18, 1871.

3. All the lands claimed in the supplemental bill are within the ten-mile limits and belong to this first class of lands.

(2.)

As to the lands without the ten and within the twenty-mile limits of the St. Vincent Extension.

1. If the map of location filed on November 18, 1871, was valid, then, "as soon as" the map was filed, it was the duty of the secretary (under the act of March 3, 1865, § 7) to withdraw and reserve all lands in these limits to satisfy the grant. It was his duty also "to indicate" the lands enuring to the grant within these limits, and also (under the act of July 13, 1866,) at once to certify them to the state.

And therefore when, three days afterwards, the map of the "Minnesota Division" was filed, none of these lands were within the description of lands "not granted, *reserved*, or otherwise appropriated," and were not within the grant to the Northern Pacific Co.

2. Since that part of the line for which these lands were certified and patented could be and was properly located under the acts of 1857 and 1865, without the alterations provided for in the act of 1871, there is nothing whatever to impeach the validity of the location and map. And even if the location depended on these provisions of the act of 1871, it has been shown to be valid on November 18, 1871. But assuming that the map was not, when filed, a valid map of location, and was not made such *ab initio*, and is not to be considered as filed until after the filing of the Northern Pacific Company's map, and that that Company can be allowed to make and rely on this objection, in that case,

(*a*.) If the Northern Pacific Company's location was insufficient because not of its entire line, it can claim none of these lands.

(*b*.) As to all of the lands of this class (or of any class) lying beyond its own 20-mile limits, it can assert no title to any of them until it shows (1) a deficiency within its own 20-mile limits, *not caused by the location of its road for any*

distance upon the same general route with a railroad, for which lands had been granted prior to July 2, 1864, and (2) a *selection* by it, of those specific lands, in place of the lands so deficient.

(*c.*) And as to all lands of this class lying beyond its own 30-mile limits, the company must not only show a deficiency and selection such as it must show to obtain any lands beyond its 20-mile limits, but it must also *show a deficiency within its 20-mile limits resulting from sales, grants, or other disposition of lands within those limits between July 2, 1864, and May 31, 1870,* and a *selection* by it of these very lands to make up the deficiency thus caused.

(*d.*) The Northern Pacific Company has wholly failed to show itself entitled to select any of the lands outside its twenty-mile limits, or to show any selection of any of these lands.

> (*d**) As to the lands within the common indemnity limits, and especially as to those included in the withdrawal of October 12, 1870, but as to which that withdrawal was vacated upon the filing of the map of definite location, which was followed by the order of December 26, 1871. Record, 333–4 (735–7.)
>
> Such lands were, notwithstanding the withdrawal of October 12, 1870, open to selection as indemnity lands for the St. Paul & Pacific line. And defendant is entitled to hold them, for the Northern Pacific Co. has not shown an earlier —nor indeed any—selection of them.

this map the State of Minnesota had not acquired, by the legislation of congress and the actual location of the St. Vincent Extension on the face of the earth, and the actual filing of such map on November 18, 1871, any rights whatever, whether absolute, or inchoate and capable of being made absolute,—if such be the holding of the court, then, and only then, it may be conceded that, looking at the acts of con-

gress and the filing of the maps of location alone, and without regard to any equities arising from the dealings of the parties and the action of the Northern Pacific Co., that company would have a better title than the St. Paul & Pacific Co. to the lands within its own 20-mile limits and outside the 10-mile limits of the St. Vincent Extension.

SIXTH.

By reason of the relation between the Northern Pacific and the St. Paul & Pacific companies at and before the passage of the act of March 3, 1871; the part taken by plaintiff in procuring that act to be passed; in procuring the St. Paul & Pacific Co. to relinquish lines and lands which plaintiff could not otherwise obtain, and which the plaintiff thereupon at once appropriated and still holds; in directing the location and construction of the altered lines of the St. Paul & Pacific Co.; in issuing and negotiating the mortgage bonds of the St. Paul & Pacific Co., with the representations contained in such bonds and mortgage—the plaintiff is equitably estopped as against the bondholders and the Manitoba Co., (which succeeded to their rights and became purchaser at the mortgage sale,) from asserting title to any of the lands in dispute.

I.

As already shown, the Northern Pacific Co. has elected to treat the location of 1869 and the line from a point between St. Cloud and Lake Superior as abandoned on November 21, 1871, when it filed its map of definite location. "The Northern Pacific Co. has received patents for or is claiming under its congressional land grant all the lands in odd-numbered sections within twenty miles on each side of its railroad as located and constructed in Minnesota, to the same extent as if no grant had ever been made to the state of Minnesota to aid in the construction of any of the other lines of railroad mentioned in the pleadings." Record, 585 (1202.) And by this election the Northern Pacific Co. is estopped to allege that on November 18, 1871, when the map of definite loca-

tion of the St. Paul & Pacific line was filed, the act of March 3, 1871, was not in accord with the state legislation, or that proper releases had not been filed.

It has also been shown that the St. Paul & Pacific location of 1871, and the construction in 1871 and 1872, were directed by the Northern Pacific Co., and that company is therefore estopped to question that such location and construction were in accord with the act of March 3, 1871.

Record, 384 (827–8), 525 (1088–9), 263–4 (618–9), 266–7 (623–4.)

And the bonds and mortgage expressly state that the act of March 3, 1871, "was in conformity with the legislation of the state of Minnesota," and that the St. Paul & Pacific Co. "is duly authorized and empowered by law to construct, maintain, and operate the lines of railroad in the state of Minnesota, to be constructed from St. Cloud to St. Vincent and from Watab to Brainerd in said state, * * * and to execute, acknowledge and deliver a deed of trust or mortgage upon the said branch lines of railroad *and the land grants* connected therewith, in the manner and form of this indenture."

Record, 426 (906), 427 (908.)

This representation, if made by the Northern Pacific Co. to the persons in Holland who bought the bonds, must of course estop that company from alleging that when the bonds and mortgage were made, in April, 1871, any condition precedent to the authority of the St. Paul & Pacific Co. to locate from St. Cloud to St. Vincent remained unperformed. The case is clearly within *Knox County* v. *Aspinwall*, 21 How. 539, and many subsequent cases.

II.

The Northern Pacific Co. is estopped by the statements in the $15,000,000 mortgage, and in the mortgage bonds, from asserting any right to the lands in controversy, founded either (1) on priority of grant, or (2) on the withdrawal made October 12, 1870.

1.

The responsibility of the Northern Pacific Co. for the representations.

It will be remembered that *the bonds* were the bonds of the First Division of the St. Paul & Pacific Railroad Co. (called for brevity the First Division Co.) while the *mortgage* was executed by the St. Paul & Pacific Co. They both bear date April 1, 1871.

In 1870 the Northern Pacific Co. acquired the stock of both these companies.

It bought the stock of the St. Paul & Pacific Co. in 1870. In March, 1870, it procured 30,000 shares, and in October, 1870, it obtained the remaining 20,000 shares.

Record, 470, 471 (990–992), 520–523 (1080–5.)

In November, 1870, the Northern Pacific Co. bought of E. D. Litchfield all the stock of the First Division Co., and on December 9, 1870, a written contract of sale was executed.

Record, 395 (846), 544–5 (1123–5), Exhibit V.

It is also admitted by the plaintiff that since March 1, 1871, "the stock of the defendant corporation has been held and owned by a trustee in trust for the plaintiff corporation." Record, 380 (821.)

Owning the stock of both these companies, the Northern Pacific Co. filled the directory of each with its own directors.

Record, 473–4 (995–6), 518 (1076), 477 (1001.)

Having done this, it caused the board of directors of each company to make with the other the lease and contract by which the First Division Co. was to issue its bonds to the amount of $15,000,000, to be secured by mortgage by the St. Paul & Pacific Co. on the lines and land grant; and the First Division Co. was to build the lines, taking a 99 years' lease of them.

The resolutions of the boards, being Exhibits M and Y, are in Record, 518 (1076), and 547 (1129.)

The contract and lease, being Exhibits 45 and 46, are in Record, 399 (855)–406 (868.)

The resolution of the St. Paul & Pacific board (Exhibit M) was adopted February 1, 1871.

On February 15, 1871, "the following preamble and resolution were unanimously adopted," by the Northern Pacific board of directors:

"*Whereas*, the Northern Pacific Railroad is the owner of a majority of the stock of the First Division of the St. Paul & Pacific Railroad Company, and practically the owner of the property; and whereas it becomes necessary, *in carrying out our arrangements with the agents for the sale of the bonds* of the First Division of the St. Paul & Pacific Railroad Company *in Europe* that a contract should be made with some individual for the construction of the road of the St. Paul & Pacific Railroad from Sauk Rapids to St. Vincent: Therefore,

"*Resolved*, that this board recommends and assents to the First Division of the St. Paul & Pacific Railroad contracting with Wm. G. Moorhead for the construction of said road, and that *the president be directed to take a declaration of trust from said Moorhead, and by proper instrument to indemnify said Moorhead fron all risk and damage by reason of entering into said contract.*"

Exhibit O 2; Record, 524 (1087.)

That is to say, though Moorhead (one of the plaintiff's directors) was nominal contractor, the real contractor was the plaintiff.

(It will be noticed that this contract relates to the line au-

thorized by the acts of 1857 and 1865. But upon the passage of the act of March 3, 1871, the Northern Pacific Co. (which procured its passage) was so entirely convinced that that act did not provide for *new* lines, but for *relocation* of old ones, that it deemed the existing resolutions of the St. Paul & Pacific and First Division Companies sufficient to authorize, for the line from Watab (or Sauk Rapids) to Brainerd, and from St. Cloud to St. Vincent, the same lease and contract which those resolutions authorized for the line from Sauk Rapids, via Crow Wing, to St. Vincent. Hence no additional resolutions of those companies are found, and by the resolution of the Northern Pacific board of May 10, 1871, (soon to be quoted,) it appears that the direction as to having Moorhead take a contract, and as to his executing a trust deed, had been deemed applicable and had been applied to the lines as relocated under the act of March 3, 1871.)

The lease and contract between the St. Paul & Pacific and First Division Companies bear date and were executed April 1, 1871.

Exhibits 45 and 46; Record, 399 (855), and 402 (860.)

And pursuant to the contract and lease the $15,000,000 mortgage was made and bonds issued, also bearing date April 1, 1871.

Exhibit 66; Record, 426 (905.)

On May 10, 1871, the Northern Pacific board of directors "unanimously adopted a preamble and resolutions, of which the following is a copy:

"Whereas, this corporation is practically the owner of the St. Paul & Pacific and the St. Paul & Pacific First Division railroads and their properties and estates, through an ownership of the share capital of those companies, and with a view to protect and promote this interest: Therefore

"*Resolved, That there be appointed a committee of three,* who shall take entire charge of the construction of said roads,

and bring them into working use at the earliest day practicable consistent with reasonable economy.

"*Resolved, That said committee be also empowered to carry forward and perfect the negotiations for the delivery and sale of the bonds of the St. Paul & Pacific Railroad Company, and to apply the proceeds of said sale to the construction of the roads, according to existing agreements, and shall report their proceedings monthly to this board.*

"*Resolved,* That as *Wm. G. Moorhead* holds in trust for this company the contract for constructing the St. Paul & Pacific First Division, he *shall be the chairman of said committee,* and that he is authorized to employ a competent clerk to the committee."

And in the same exhibit in which the secretary of the Northern Pacific Co. certifies the foregoing resolution, he certifies "that at a meeting of said board of directors, held on the 12th of May, 1871, the president of the company announced as the committee to take charge of the construction of the St. Paul & Pacific railroads, the following *members of the board:* Mr. Moorhead, chairman; the president; the vice-president; Mr. Cass; Mr. Felton."

Exhibit O 2; Record, 525 (1088–9.)

The trustees named in the mortgage were Mr. Moorhead, Mr. Horace Thompson, and Mr. Geo. L. Becker. Mr. Becker was president of the First Division Co., and had charge of construction under Mr. Moorhead, the contractor. And Mr. Becker testifies that the contract with Moorhead was pursuant to agreement made in November, 1870, when the Northern Pacific made the agreement with Litchfield for purchase of the First Division Co. stock, which is contained in the instrument Exhibit V, executed December, 1870, and is in Record, 544–5 (1123–5),—showing, as before remarked, that all parties considered the line under the act of March 3, 1871, a mere relocation of that authorized by former acts.

Record, 477 (1001–2.)

Mr. Becker thus testifies (in 1877) as to how the bonds were disposed of:

"They were, when executed, forwarded to Wm. G. Moorhead, who sent them (all but 30) to Lippmann, Rosenthal & Co., at Amsterdam, for sale. They were sold by them to the extent of $10,500,000 or $10,700,000, or thereabouts. * * * The proceeds of the bonds, so far as they were sold, have been exhausted. Of these proceeds about $1,300,000 were used in the construction of the Extension Lines, to-wit, from Sauk Rapids to Brainerd and from St. Cloud to St. Vincent. The balance has been used in other ways. About $1,500,000 went to complete the Main Line of the First Division Company; about $1,000,000 for payment of interest coupons on the Main and Branch Lines of the First Division Company; $500,000 were used for commissions and expenses of the firm negotiating them, in round numbers. The proceeds of the balance, I suppose, was reserved by Lippmann, Rosenthal & Co. to pay the first three years' interest on the bonds which were sold."

Record, 395 (847.)

The mortgage and the bonds both state that the bonds are issued and negotiated "for the purpose of procuring means to construct and equip the said lines of railroad" on which the mortgage was made; and again, "to construct roads from St. Cloud to St. Vincent and from Watab to Brainerd." Record, 428 (909–910.)

And in the mortgage the St. Paul & Pacific Co. (that is, the Northern Pacific Co.) covenants that itself or the First Division Co. "shall and will diligently and faithfully use and apply the net proceeds of the negotiation of said bonds, or such of them as shall be negotiated, to the construction and equipment of said railroads."

Record, 444 (940.)

Mr. Becker's testimony shows that but $1,300,000 of the proceeds were thus "faithfully used," and that $2,500,000 were faithlessly misapplied to other uses. And the record

shows that this misapplication was intended when the covenant was made; that it had been planned and made the subject of a formal agreement, made November 22, 1870, by which

"The First Division of the St. Paul & Pacific Railroad Co., of Minnesota, for the purpose of fully completing and equipping its Main Line from St. Anthony to Breckenridge in accordance with the terms of a contract heretofore made and entered into between it, the said company, and Mr. E. Darwin Litchfield of London, England, undertakes and agrees to pay to said Litchfield or his legal representatives the sum of $1,500,000, or so much thereof as may be requisite and necessary for the purposes aforesaid, *out of the proceeds of a new series of bonds* to be by the said company issued, *secured by a pledge of* the franchises, land grants, and road bed of *the Extension* of the Branch Line of said company *from St. Cloud or Sauk Rapids to Pembina.* * * * * *

"This memorandum is made *with the knowledge and approval* of Mr. L. Willmar, who represents the firm of Lippmann, Rosenthal & Co., of Amsterdam, and *of Mr. William G. Moorhead, who represents the interests of the Northern Pacific Railroad Company in the subject matter hereof.*"

This instrument is signed by the First Division Co. by its president, by Mr. Litchfield, Mr. Willmar, and Mr. Moorhead.

Exhibit W; Record, 546 (1126.)

Sauk Rapids was near Watab, and Pembina is across the Red River from St. Vincent.

With this Exhibit W may be read Exhibits X and Y, which immediately followed it.

The lines authorized by the act of March 3, 1871, were considered so identical with that previously authorized and having a grant under the acts of 1857 and 1865—one was considered so clearly to be nothing more than a relocation of the other—that an agreement to misapply funds to be raised by mortgage of the original line was deemed to attach to the mortgage of the relocated line, and was carried out more "faithfully" than the covenant in the mortgage.

Elsewhere Mr. Becker testifies:

"I executed the bonds as president of the First Division of the St. Paul & Pacific Railroad Company, and countersigned them as a trustee, sent them to Mr. William G. Moorhead, at Philadelphia, who was also a trustee. He countersigned and sent them to L. Willmar, London, England.

"The money was received from the sale of those bonds by orders drawn by myself upon Lippmann, Rosenthal Co., as the money was required here for construction purposes. My impression is that they were payable to the order of different persons. I do not know but that they were all payable to the order of Moorhead. They were all sent to him. I sent them all to him."

Record, 481–2 (1008–9.)

Mr. Willmar "was a director of the First Division Company," and he also "represented the firm of Lippmann, Rosenthal & Co."

Record, 481 (1008.)

On pages 478–481 (1002–1007), Mr. Becker produces messages from the Northern Pacific Co.'s president, J. Gregory Smith, showing the control exercised by that company over the First Division Company,—among them these:

"New York, February 2, 1871.

"To Geo. L. Becker:

"Please telegraph your friends at Washington to give their support to the bill which will be introduced by Mr. Wilson *at our request*, as a substitute for yours. Reply. Have you received Mr. Willmar's letter of January 12th, a copy of which I have, and are you prepared to make a transfer? When will you be prepared to come here with transfer books, etc., and close the matter? It is important that you do so *in order that bonds may be issued forthwith.*

J. G. SMITH, *Pres't.*"

Record, 478 (1003.)

The bill "introduced by Mr. Wilson," is the same which became the act of March 3, 1871. Record, 513 (1066), 514 (1068.)

"March 8, 1871.

"To Geo. L. Becker, New York:

"Have you forwarded any bonds to Willmar? If so, how many? A meeting should be called *soon* to act upon *the recent act of Congress changing our line.* Did Willmar authorize you to draw for $100? Reply.

J. G. SMITH."

Record, 479 (1004.)

This evidence shows, *ex abundanti,* that for every statement, representation, and covenant in the bonds or mortgage, the Northern Pacific Co. is responsible. It in effect made them, and it got by means of them the bondholders' money, some of which it "faithfully used" in building the Extension Lines, and more of which it unfaithfully misused for other purposes and enterprises of its own.

Where then were the representations?

2.

The representations in the bonds and mortgage.

The mortgage recites:

"*Whereas,* the said company (the St. Paul & Pacific Co.) is duly authorized and empowered by law to construct, maintain, and operate the railroads * * to be constructed from St. Cloud to St. Vincent and from Watab to Brainerd in the said state * * * and to execute, acknowledge, and deliver a deed of trust or mortgage upon the said branch lines of railroad and the land grants connected therewith in the manner and form of this indenture:

"*And whereas,* the congress the United States, by a certain act thereof, entitled," (etc., giving the title and date of approval of the act of March 3, 1857,) "and by a certain other act thereof, entitled," (etc., giving the title and date of approval of the act of March 3, 1865,) "granted to the said state of Minnesota certain lands for the purpose of aiding in the construction of railroads from St. Cloud aforesaid by way of Crow Wing to St. Vincent aforesaid, and from St. Cloud to the waters of Lake Superior:

"*And whereas,* the said state of Minnesota * * granted the said lands applicable to the construction of said railroads

from St. Cloud to St. Vincent and from St. Cloud to the waters of Lake Superior to the said St. Paul & Pacific Railroad Company, as by reference to said legislative acts" (previously recited in the mortgage) "will more fully and at large appear:

"*And whereas*, the congress of the United States aforesaid, by another act thereof, to-wit, an act entitled," (etc., giving the title and date of approval of the act of March 3, 1871,) "enacted and declared" (setting forth *in extenso* the act of March 3, 1871.)

"*And whereas*, the act of said congress last aforesaid was in conformity with the legislation of the state of Minnesota, and particularly with the act thereof aforesaid approved February 6, 1864.

"*And whereas*, the said company has duly accepted the act of congress last aforesaid, and duly resolved to *alter and relocate* its branch lines of railroad as therein provided, and to execute and deliver the releases of the lands along said abandoned route therein mentioned."

Exhibit 66; Record, 426–7 (905–8.)

The mortgage then recites the making of the contract "bearing even date herewith," (April 1, 1871,) between the mortgagor and the First Division Co. Record, 427 (908.)

This contract is Exhibit 45; Record, 399 (855.)

After a recital that the First Division Co., pursuant to such contract, has resolved to issue its bonds, and that they are "to be issued and negotiated for the purpose of procuring means to construct and equip the said lines of railroad," the form of the bond is set out. It is headed:

"FIRST MORTGAGE BOND

"*Upon 348 miles of Railroad and 2,217,200 Acres of Land.*"

"Issued by the First Division of the St. Paul & Pacific Railroad Company to construct roads from St. Cloud to St. Vincent and from Watab to Brainerd."

Record, 428 (909.)

After the acknowledgment of indebtedness and promise to pay, the bond states that it is one of a series of 15,000 bonds, amounting in the aggregate to $15,000,000, the payment of the principal and interest of which is secured by a deed of trust or mortgage of even date, executed to the trustees, and which mortgage

"Conveys to the said trustees certain railroads which the said St. Paul & Pacific Railroad Co. *is authorized to construct* and operate in the said state of Minnesota, to-wit a railroad from at or near St. Cloud to St. Vincent, being a distance of 293 miles, more or less, and a railroad from Watab to Brainerd, being a distance of 55 miles more or less; * * and which conveys also to the said trustees all the right, title, and interest which the company last aforesaid now has, or shall or may hereafter acquire by the construction of said railroad or any part thereof or otherwise, in, to, or concerning certain lands, situate in said state, *which were heretofore granted* by the Congress of the United States to aid in the construction of *such railroads*, by *acts* of the said congress *approved*, respectively, *March 3, 1857, March 3, 1865*, and March 3, 1871; the extent and aggregate area of such lands to which said company will become entitled by the construction of said railroads *under existing legislation* being estimated at 2,217,200 acres, more or less."

Record, 429 (911–2.)

(The length of the two lines being 348 miles, a full grant of 10 sections or 6,400 acres per mile would be 2,227,200 acres.)

The mortgage conveys the lines of railroad and also

"All right, title and interest which said party of the first part now has, and all right, title, and interest which the said party of the first part, its successors or assigns, shall or may at any time hereafter acquire by reason of the construction of said railroads or of either or of any part of either thereof, or otherwise, in, to or concerning the lands situate, lying, and being in the state of Minnesota, *which are embraced* or intended to be embraced *in the grants aforesaid, or either of them*, made by the Congress of the United States *to the former territory* and present state *of Minnesota by the acts* of said Congress

hereinbefore mentioned, or either of them, and which have been granted by said state to the party of the first part, or shall or may be granted or conveyed to the said party of the first part, its successors or assigns, *to aid* in the construction of *the said lines of railroad*, or of either or of any part of either thereof."

Record, 431 (915.)

And the contract between the two companies, to which the bondholders are referred, binds the First Division Co. to build "the lines of railroad which the said party of the second part" (the St. Paul & Pacific Co.) "*is by law authorized to construct* * * from some point at or near St. Cloud, county of Stearns, to St. Vincent in the county of Pembina, being a distance of 293 miles, more or less, and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, a distance of 55 miles, more or less; and to complete, equip and put the same and every part thereof in good running order and condition within the time and in the manner required by *the acts of Congress granting lands to the Territory* and State of Minnesota to aid in the construction of *said railroads*, to-wit"—proceeding to give the titles and dates of approval of the acts of *March 3, 1857*, and *March 3, 1865*, as well as of March 3, 1871.

Record, 399–400 (855–6.)

The act of March 3, 1857, was the only grant to *the territory* for a line to St. Vincent.

A.

The foregoing extracts show very clearly (what is also indicated by other evidence in the case) that the Northern Pacific Co., when it procured the passage of the act of March 3, 1871, and caused it to be accepted by the St. Paul & Pacific Co., and caused the agreements between that company

and the First Division Co. to be executed for the construction and lease of the lines, and caused the mortgage to be made and the bonds to be issued and negotiated, considered that act *not* as authorizing wholly new lines and making a wholly new grant, but merely as authorizing the St. Paul & Pacific Co. to "relocate" a line for which it had a subsisting grant under the acts of 1857 and 1865—a grant which, in case of conflict (and conflict at some point was unavoidable) must prevail over its own grant. This is apparent from the constant reference to the acts of 1857 and 1865 as "granting lands to the *territory* and state of Minnesota, to aid in the construction of *said railroads*"—not merely for the railroads described in those acts, but for the lines described in the act of 1871, and in the contract and in the mortgage. And so the mortgage says that the St. Paul & Pacific Co. has "duly resolved to alter and *relocate* its branch lines of railroad," as provided in the act of 1871—*not* to "locate and construct the new lines of railroad" authorized by that act.

The circuit court seems to concede that if the authority given by the act of 1871 was an authority to "relocate" a line for which the company already had a grant—if the words used had been "to relocate" its branch lines, instead of "to alter its branch lines"—then the act would have meant just what the Northern Pacific Co., its author and beneficiary, supposed it to mean; and that in such case the already existing grant would attach to the lines as so relocated. The court says: "The act does not provide for *relocating* existing branches, but for *new ones* in lieu of those existing. It does not *transfer* an existing grant, but *makes a new grant* of a proportional amount along the new lines."

Record, 177–8 (415.)

That is to say, the court says that if the language of the act had meant what the Northern Pacific thought it meant, and said it meant, and told the bondholders it meant, the

plaintiff has no title to these lands by reason of either (1) priority of grant, or (2) the withdrawal of October 12, 1870. But the court, in favor of the Northern Pacific Co., gives the language a construction the opposite of what that company so gave it, and on such construction awards to that company the lands.

In many cases where parties have acted on an erroneous construction of a grant, a statute, or a contract, and one of them has obtained money or property from the other by reason of such construction, it is certainly equitable that he shall not, without restoring to such other what has thus been received from him, assert an opposite construction of the statute, grant, or contract.

And certainly it is hardly in accord with the received canons and the invariable practice in construing land-grant acts, to give to the act of March 3, 1871, a construction so much more favorable to the Northern Pacific Co. than the construction put upon it and claimed for it by that company when procuring its passage and when taking the benefit of its provisions.

B.

The statements in the foregoing extracts not merely show what the Northern Pacific Co. *considered* the act to mean; they show what it *represented* the act to mean when it offered for sale bonds secured on the land grant. These statements were representations made to the persons to whom the bonds were offered in Holland, to induce them to purchase, and which did induce them to purchase.

The bond refers the purchaser to the mortgage, and the bond and mortgage both refer him to the contract between the two companies for construction, (Exhibit 45,) from which an extract has been made.

(1.)

These statements were representations

(*a.*) That the St. Paul & Pacific Co. holds a grant for the lands from Watab to Brainerd and from St. Cloud to St. Vincent under the acts of 1857 and 1865, as well as under the act of 1871. That the origin and sole source of its grant is *not* in the act of 1871.

(*b.*) That the purpose and effect of the act of 1871 are *not* to authorize a new line and make a new grant for it, but to authorize the St. Paul & Pacific Co. to "relocate" a line for which it already had a grant under the acts of 1857 and 1865.

(*c.*) That under *existing* legislation (including the acts making grants to the Northern Pacific Co.) the St. Paul & Pacific Co. is entitled to a full grant of ten sections per mile of road. And this is certainly a representation that the quantity named as granted, even if an "estimated" quantity, is not to be depleted by reason either of (1) "existing legislation" in favor of the Northern Pacific Co., or (2) a withdrawal, whether authorized or unauthorized, for the benefit of that company.

This is certainly what the Northern Pacific Co. meant by the representations, for they simply express its own understanding of the effect of the acts of 1857, 1865, and 1871. And it is of course the meaning which it intended and expected the bond purchasers to put upon the representations. And it cannot be denied that the bondholders did understand the representations as meaning just what they say and what the Northern Pacific Co. meant should be understood from them.

Why should the Northern Pacific Co., having made these representations to get money from the bondholders on the mortgage security thus offered, and having thereby got their money, and having applied the greater part of it to purposes of its own in no way beneficial to the mortgaged property—

why should the Northern Pacific Co. now be permitted to say, contrary to its representations, that the mortgage did *not* cover the lands it was represented to cover, and did not cover these lands because, though represented to have been granted to the St. Paul & Pacific Co., they had not been so granted, but had either been granted to the Northern Pacific Co., or had been excepted from the grant to the St. Paul & Pacific Co. to enable the Northern Pacific Co. to select them to fill its own grant?

The Northern Pacific Co. represented the St. Paul & Pacific Co. as having title, and as authorized to receive, upon building its lines, conveyances of the lands in place along its lines and enough other lands in the 20-mile limits to fill its grant. On that representation the Northern Pacific Co. induced the bondholders to lend money on a mortgage of such title—money the most of which was diverted by the Northern Pacific Co. to purposes of its own other than the adding of value to the mortgaged property. The Northern Pacific Co. now says that along 40 miles of the road the mortgage covers no lands, because, when the representation was made, they had already been granted to itself, and the mortgagor had no title nor the right to acquire any; and for another 40 miles of the road the mortgage covers no lands whatever, because, when the representations were made, they had been set apart for itself and had been excepted from any grant to the mortgagor.

It is true those two sections of road and land belts of 40 miles each overlap each other, but the case is the same as if they did not.

(2.)

The lands as to which the lien of the mortgage is defeated fall into two classes. (1) Those within plaintiff's place limits and embraced in schedule B of the decree. (2) Those outside its place limits, but within the limits of the with-

drawal of October 12, 1870, embraced in schedules C and D of the decree.

As to the *first* class of lands, it may be said that the title depends not on matters *in pais*, but on the construction of granting acts of congress—that it is in a sense a matter of law and not of fact.

But as to the lands in the *second* class, their exception from the St. Paul & Pacific Co.'s grant and from its mortgage does not depend solely on the construction of acts of congress. Mere priority of grant would not entitle plaintiff to any of them, for they are not within its place limits and it has selected none of them. Still less would plaintiff's priority of grant *except* them from the grant to the St. Paul & Pacific Co. They are taken from under the lien of the mortgage and awarded to the Northern Pacific Co. solely because, on October 12, 1870, before the act of March 3, 1871, was passed, they had, at the instance of the Northern Pacific Co., been withdrawn for the purposes of its grant. The effect of that withdrawal was to deprive the St. Paul & Pacific Co. of every acre of land, either in its place or its indemnity limits, along 40 miles of its line. *This withdrawal was a pure matter of fact.* It was a fact existing when the representations were made, a fact of which no study of the acts of congress would give information. Knowing this fact, knowing that it necessarily excluded from the lien of the mortgage all lands along 40 miles of the line, the Northern Pacific Co. concealed it from those to whom it offered the bonds and the mortgage security. It did more. It represented that the St. Paul & Pacific Co. was entitled to a full grant of ten sections along each mile of its road, on which the mortgage would be a lien. It in effect represented that no withdrawal such as is now asserted had been made.

And it would seem entirely clear that, having made and induced the bondholders to part with their money to it on the faith of this representation of *fact*, the Northern Pacific Co.

cannot assert, as against the lien of the mortgage, any claim to these lands which must rest on a falsification of this *representation of fact.* And therefore as to these the decree must be reversed, for the Northern Pacific Co. has shown no title either by location or selection.

(3.)

The circuit court asks: "Suppose there had been no conflict of grant, and the road as built had fallen short eight miles of the distance named, would the Northern Pacific have been bound to make up the deficiency in the area of the grant?" Record, 182, (417.) We answer—Certainly not, in the absence of fraud. But if the Northern Pacific Co., when it represented that the grant for the road (mortgaged for a *gross sum,* with a land grant on a *mileage* basis) was 10 sections per mile for 348 miles, and when it got the bondholders' money on the representation that the mortgage was a lien on such full grant, had known that the road must necessarily be 80 or even 40 miles short of that length, or that the land grant could not exceed six sections per mile, it is not easy to see why it should not be bound to make its representation good.

And when the Northern Pacific Co. represented that "under existing legislation" (including its own grant) the St. Paul & Pacific Co. was entitled to a full grant of 2,217,000 acres on which the mortgage was a lien, knowing or believing that by reason of the priority of its own grant, or by the fact of the withdrawal, or from both those causes, the quantity named would be reduced by several hundred thousand acres, it is not easy to see why it should not be bound to make the representation good.

And if the Northern Pacific Co. made this representation (as it doubtless did) in the belief that the St. Paul & Pacific Co. had the elder grant, and that its rights were unaffected by the withdrawal, then, while it would have been guiltless

of fraud when making the representations, it should not now be allowed, after getting the bondholders' money on the faith of them, to assert the fact of withdrawal, or to assert an opposite construction of the acts, and thereby falsify its own representations, to its own gain and to the destruction of the lien it had offered the bondholders.

If the grant had fallen short by reason of pre-emption or homestead entries before definite location, it is not pretended that the Northern Pacific Co. would be bound to make such losses good. But it is insisted that the grant is not to be reduced below a full grant of ten sections in place along the line by reason of the claim now made by the Northern Pacific Co.,—which presents a very different case.

(4.)

The circuit court says:

"The representation contains no intimation that the Northern Pacific intended to waive its legal rights. Nothing was concealed. The sources of title were disclosed. The limitations therein were patent. If assurance from the Northern Pacific was desired it should have been asked. The purchasers took all chances as to the construction of either road, and were bound to assume that each would claim and receive its legal right. To sustain an estoppel under these circumstances would carry the doctrine far beyond any adjudicated case as well as beyond the demands of equity and justice."

Record, 182 (417.)

But were "the sources of title" fully disclosed? Were "the limitations therein patent?" No disclosure at all was made nor any hint given of any title or source of title of the Northern Pacific Co. And the *fact* of the withdrawal of October 12, 1870,—a principal "source of title" of the Northern Pacific Co.—was not mentioned, and its existence was inconsistent with the representations made. In one sense this fact was not a "source of title" of the St. Paul & Pacific Co., but it impaired at its source whatever title originated in the act of

1871. It was a very effectual "limitation" on such title, and it was a "source of title" of the Northern Pacific Co., on which title alone the circuit court has awarded it all the lands in schedules C and D.

And the statement that by the acts of 1857 and 1865 as well as by the act of 1871 the St. Paul & Pacific Co. had a full grant and the mortgage was a lien on it, should preclude the Northern Pacific Co. from asserting that by reason of a fact, known to it when the statement was made, but concealed and misrepresented, and by reason of a construction of the grants opposite to what it represented as their meaning, it and not the purchaser at the mortgage sale is entitled to the thousands of acres awarded by the decree, however much they may be needed to fill the St. Paul & Pacific grant, and make the representation good.

"The representation contains no intimation that the Northern Pacific Co. intended to waive its legal rights. The sources of title were disclosed. The limitations therein were patent. If assurance from the Northern Pacific was desired it should have been asked."

But neither the representations nor anything else in the bonds or the mortgage gave the purchasers any intimation that the Northern Pacific Co. had any legal or any other rights to be waived, or that any assurances from that company could in any way affect the grants that were held out as security for the bonds. The bonds, the mortgage, the construction contract between the two companies referred to therein, and all the acts of congress and of the state that are recited or mentioned, may be searched in vain for any information as to any grant or any claim of the Northern Pacific Co. But suppose the bondholders had been advised of the Northern Pacific Co.'s relations to the property—its grant from congress and its ownership of all the stock of the other two companies, and their estates and property. Would not any purchaser have been justified in relying on

these statements, in effect made by the Northern Pacific Co., as sufficient assurance that they were true? And, if true, there would be no need of any other waiver or assurance.

If no representations had been made, or if the Northern Pacific Co. had nothing to do with the representations that were made, of course it would have rested with the bondholders, before buying, to ascertain for themselves what claims of the Northern Pacific Co. or of any other company or person might defeat or impair the grant. But as against the St. Paul & Pacific Co. and the First Division Company, in whose name the representations were made, and as against the Northern Pacific Co., which, as owner of the stock of both those companies, caused the representations to be made, and which alone profited by them, it certainly cannot be said that the bondholders were bound to make inquiries whether the Northern Pacific Co. intended to waive legal rights which, if the representations were true, did not exist. They were not bound to exact from the Northern Pacific Co. assurances against a claim of which they had no notice, and which, if the representations were true, had no existence. If they had a right as against the Northern Pacific Co. to rely on the representations, they were under no duty to inquire elsewhere as to their truth, or to secure from any quarter protection against their possible falsity.

(5.)

In the answer to the supplemental bill it is said that the statements in the bonds and mortgage "amounted to no more than the expression of a mistaken opinion about a question of law." Record, 160 (385.) This was the position taken also in the argument in the circuit court, and substantially by that court in its decision.

This argument is of course inapplicable, as has been shown, to any statement involving the existence or non-ex-

istence of *the fact* of the withdrawal of October 12, 1870, on which alone the claim to all the lands in schedules C and D depends.

And even if any of the other representations do involve construction of the granting acts of congress, it does not follow that the Northern Pacific Co. is not estopped by them from claiming any of the lands in suit.

The bonds were sent to Holland for sale and were sold there. The representations to the purchasers were made in Holland. Even if representations of the law of the United States, they were yet representations of *foreign* law, and therefore representations *of fact*.

Haven v. *Foster*, 9 Pick. 112, 130.

And in case of a representation involving a matter of *domestic* law, as in case of a mistake in matter of law, (especially a mistake induced by the other party to a transaction,) there is a clear distinction between the general law of the land, which every one is bound to know, so that *ignorantia juris non excusat*, and such matter of law—such *jus*—as may be involved in a private right of ownership.

Thus, one who was himself entitled to land as heir-at-law to a deceased *feme covert*, encouraged another to buy the land from a third person whose only title was as devisee under the will of such *feme covert*, which will was void in law because of the coverture. It was *held* by Chancellor Kent that he could not afterwards assert his own title as heir-at-law as against such purchaser. The circumstance that the title depended on a mere question of law as to which both parties were equally ignorant would not help him nor take his case out of the rule that "he who encourages another to buy of a third person a right to which he himself has a title, is to be postponed in equity to such a purchaser."

Storrs v. *Barker*, 6 John. Ch. 166, 172.

And see *Kirk* v. *Hamilton*, 102 U. S. 68, where one was *held* estopped to allege that a sale under a decree was a mere nullity in law *upon the face of the record*. See, also, *Dickerson* v. *Colgrove*, 100 U. S. 578, 581.

Here the Northern Pacific Co. encouraged—it solicited—the bondholders to take from another a mortgage on lands which it now says did not belong to that other but belonged to itself. Suppose that after these lands had been patented to the St. Paul & Pacific Co., the Northern Pacific Co., believing or not believing that company to have the better title, had induced a third person to buy of that company, taking a deed containing every recital and statement as to the acts of congress that is contained in the bonds and mortgage. The doctrine of the case cited would clearly estop the Northern Pacific Co. from asserting title to the lands thus purchased. But wherein does the case of one lending money on mortgage differ from that of one buying outright? Can A, after inducing B to lend money to C on security of a land mortgage made by C, afterwards assert his own title to the land free and clear of the mortgage?

And this case is stronger against the Northern Pacific Co. than the case cited or the case supposed. Here the Northern Pacific Co., being sole owner of all the stock of the other companies, and directing their every act, not only induced the bondholders to lend their money on security of a land grant represented to have been made by the acts of 1857 and 1865, and to be full, (and therefore to include these lands,) but that company itself got the money, and used most of it in other enterprises. It may doubtless be heard to say that the grant is not full by reason of homesteads and preemptions, but it ought not to be allowed to assert for itself any claim to the lands inconsistent with its representation, to the destruction of the lien of the mortgage and the title of the purchaser under the decretal sale on the mortgage.

It is true that the congressional acts are not only grants

but laws. They are laws to the extent that if they contain limitations, conditions, etc., not authorized by the common law or by prior statutes, such law and such statutes must yield to the later expression of the legislative will. And they differ from private grants in being construed in favor of the grantor. But they are primarily grants—conveyances. A legislative grant is an executed contract. *Fletcher* v. *Peck*, 6 Cranch, 87, 135. And the construction of them is a matter of law to the same and no greater extent than the construction of any other conveyances. And a representation of title founded on them is no more a representation of law, or the expression of an opinion on a matter of law, than is a representation of title under a private deed or a will, based on the construction or legal validity of the deed or will. And it would seem clear that a grantee under an act of congress should stand on the same footing as one claiming title under private grant, or devise, or descent, if, by representing the grantee under other acts of congress to be the owner, he encourages third persons to purchase the land from such other or to lend him money on mortgage on it. And if, in addition to inducing a purchase or a mortgage loan by such representation, he himself gets all or a part of the purchase or mortgage money, he should stand on the same footing as if his representations had related to a title under a private instead of a public grant.

And even if these grants were strictly laws, why should not one who procured their passage and then represented that they had a certain meaning, (certainly in a case where the construction put forward is not absurd or impossible,) and got another's money on the strength of the representation, be bound by such construction? Why should he not be estopped to say that the act meant the opposite of what he represented?.

The constitutionality of a statute is certainly as much a matter of law as its construction; and

"It is well settled as a general proposition, subject to certain exceptions not necessary to be here noted, that where a party has availed himself for his benefit of an unconstitutional law, he cannot, in a subsequent litigation with others not in that position, aver its unconstitutionality as a defence, although such unconstitutionality may have been pronounced by a competent judicial tribunal in another suit. In such cases the principle of estoppel applies with full force and conclusive effect."

Daniels v. *Tearney*, 102 U. S. 415, 421, citing many cases. And on page 420 the court say that in regard to this view of the case "we are unanimous and our minds are free from doubt."

And the same principle would estop one who, not merely by *acting* on a certain construction of a law has obtained a benefit, but who, by *representing to another* that such is the true construction, has obtained money from that other or has caused that other to part with money, from averring, as against that other, that the law means the opposite of what he represented.

(6.)

It is submitted that these considerations require the court to hold in this case, as between these parties, that the grants for all that part of the St. Vincent extension along which these lands lie is fully sustained by the acts of 1857 and 1865, without depending on the act of 1871, and that the title under these grants is paramount to that of the Northern Pacific under its granting acts, and is not affected by the withdrawal of October 12, 1870. It matters not what the court might think to be the true rule if the question were *res integra*. The parties all put this construction on the grant, the Northern Pacific induced the bondholders to lend their money, and it got that money, by representing such to be the true construction, and it should not now be heard to assert an opposite construction to defeat the mortgage or the title derived under it.

SEVENTH.

AS TO THE SUPPLEMENTAL BILL.

In this, the Manitoba Company, the purchaser at the mortgage sale, seeks to establish its title to about 30,000 acres, all situate along that part of road between a point 12 miles south and a point 92 miles north of Glyndon, which was built prior to September, 1872. These lands are all situate in towns 137, 138, 139, 140 and 141 in ranges 44, 45, 46, 47 and 49.

They are all:

1. Beyond the point of junction of the relocated line from St. Cloud with "the line of the original grant."

2. Within the 10-mile limits of the St. Vincent Line.

And nearly all are

(3) South of the north line of township 140.

In August, 1873, the United States circuit court for Minnesota appointed a receiver of these mortgaged lines. In 1878, the receiver, under an order of the court made May 31, 1878, built that part of the line from the point 92 miles north of Glyndon to St. Vincent, and also from Melrose, in town 126, range 33, to Alexandria, in town 128, range 37. This construction was paid for by receiver's debentures authorized by the court. Record, 574 (1179), 577 (1186.) On April 11, 1879, a decree was made in the foreclosure suits, pursuant to which the entire mortgaged property was, on June 14, 1879, sold by a master of this court to the Manitoba Co., which sale was by order of the court confirmed, and a conveyance to the purchaser directed and made, on June 21, 1879. Record, 554 (1141), 563 (1158), 567 (1166), 570 (1173.)

In the same year (1879) the Manitoba Co. built the link from Alexandria to a point 12 miles south of Glyndon, thus completing the entire line. The title of the Manitoba Co.

has been confirmed by the act of the legislature of March 7, 1881, and the secretary of the interior has accepted the entire line as constructed in accordance with the acts of congress, holding that such deviations as were made from the line of location were within permissible limits and for satisfactory reasons. Record, 572 (1176), 541 (1118.)

The same reasons, both legal and equitable, which we have adduced to show that the Northern Pacific Co. is not entitled as against the St. Paul & Pacific Co., and certainly not as against the mortgage bondholders, to the lands embraced in the original bill, (and least of all to those within the ten-mile limits, beyond the junction of the St. Cloud line with the line of the original grant, and south of the north line of town 140,) show that the Manitoba Co. (which, as purchaser at the mortgage sale, is invested with all the rights, legal and equitable, of the St. Paul & Pacific Co., and of the mortgage trustees and bondholders) ought to recover the lands embraced in the supplemental bill.

The decree appealed from should be reversed, and the cause remanded with directions to dismiss the original bill and to enter a decree establishing the right of the St. Paul, Minneapolis & Manitoba Railway Company to the lands embraced in its supplemental bill.

GEO. B. YOUNG,
Of Counsel for Appellants.

†

FILED.
OCT 23 1890
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

October Term, 1890. No. 54.

THE ST. PAUL and PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, THOMAS DENNY and THOMAS W. PEARSALL, Trustees, &c., and THE ST. PAUL, MINNEAPOLIS and MANITOBA RAILWAY COMPANY, Appellants,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the District of Minnesota.

STATEMENT ON BEHALF OF APPELLEE.

JAMES McNAUGHT,
A. H. GARLAND,
H. J. MAY,
Counsel.

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THE NORTHERN PACIFIC RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the District of Minnesota.

STATEMENT ON BEHALF OF APPELLEE.

The principal contestants in this case are Land Grant Railroad Companies. Their lines cross at Glyndon, in the western part of the State of Minnesota, and the contest is as to the title to lands in the vicinity of this crossing, and within the place and indemnity limits specified in the grants to said contestants.

March 3, 1857, Congress passed an act, the material portions of which are as follows:

"SECTION 1. That there be, and is *hereby*, granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads from Stillwater, by way of

St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch *via* St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, at such point as the legislature of said Territory may determine * * * *for six sections in width on each side of said roads and branches;* but in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to the lands the United States have sold or otherwise appropriated or to which the rights of pre-emption have attached as aforesaid, which lands thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads or branches, and selected for and on account of said lines or branches: *Provided further*, That the said lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which said lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.*"

A corporation known as the Minnesota and Pacific Railroad Company was created by an act of the Territory Legislature, of May 22, 1857, with powers to locate, build, and operate a railroad, in conformity with said act of Congress, from Stillwater, by way of St. Paul and St. Anthony, to the town of Breckenridge, on the Sioux Wood River, *with a branch from St. Anthony, via Anoka, St. Cloud, and Crow Wing, to St. Vincent*, on the Red River of the North. Said act is set out in the record.

See pages 445, 446, 447, 448, and 449.

On November 12, 1857, the said Minnesota and Pacific Railroad Company located the entire main line of its road, and *that portion of the branch line from St. Anthony via Anoka and St. Cloud to Crow Wing*, and the maps of definite locations thereof, duly approved by the Secretary of the Interior, were duly filed in the General Land Office in December of that year.

In 1860, the property of the said Minnesota and Pacific Railroad Company was sold and conveyed to the State of Minnesota.

The Legislature of that State, March 10, 1862, passed an act under and by which the franchises, property, and interests so sold and conveyed to said State, as aforesaid, were granted and transferred to certain persons in said act named, who were, by said act, created a body politic and corporate, by the name of the St. Paul and Pacific Railroad Company, and thereby authorized and empowered said St. Paul and Pacific Railroad Company to build said branch line of road from St. Anthony, *via* Anoka and Crow Wing, to St. Vincent. Said grant, and all and singular its provisions, were duly accepted by the said St. Paul and Pacific Railroad Company.

July 12, 1862, Congress passed a joint resolution in words and figures following:

"*Whereas*, by an act of Congress, approved March third, eighteen hundred and fifty-seven, there was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater, *via* St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch, *via* St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, the northern terminus of which was fixed by the legislature of said Territory, at St. Vincent; and

"*Whereas*, It is now believed that the public interests require a change of location of a part of said branch road; therefore,

"*Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled*, That in lieu of that part of the railroad grant to Minnesota Territory by act of Congress, approved the third of March, eighteen hundred and fifty-seven, which extends northwesterly from the *intersection of the tenth standard parallel with the fourth guide meridian*, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line, between the falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof; *Provided*, This resolution shall take effect from the filing in the General Land Office of the acceptance by the authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant as authorized by the said act of March third, eighteen hundred and fifty-seven, being by said acceptance disincumbered of the railroad grant, shall be dealt with as other public lands of the United States."

12 Stat., pp. 624, 625.

March 6, 1863, the State of Minnesota duly accepted the terms and provisions of said joint resolution by an act of the Legislature of said State, approved on that day, and by the filing of an authenticated copy thereof in the General Land Office, February 26, 1864.

Rec., pp. 352, 353.

On the 28th of May, 1864, the Board of Directors of the St. Paul and Pacific Railroad Company duly adopted the following resolution, to wit:

"*Resolved by the Board of Directors of the St. Paul and Pacific Railroad Company,* That the *terms, conditions, and provisions* of the *joint resolution* of the Congress of the United States, approved *July 2, 1862*, entitled 'A joint resolution authorizing the State of Minnesota to *change* the *line of certain branch railroads in said State,* and for other purposes,' and also the terms, conditions, and provisions of the act of the Legislature of the State of Minnesota, approved March 6, 1863, entitled 'An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior,' and also the terms, conditions, and provisions of the act of the Legislature of the State of Minnesota, approved March 4, 1864, entitled 'An act to extend the time for the construction of the branch road of the St. Paul and Pacific Railroad Company,' be, and the same, and each and every of them, are hereby *approved, accepted*, and *assented to by the St. Paul and Pacific Railroad Company;* and the President and Secretary of this Company are hereby directed to transmit a duly certified copy of this resolution to the Government of the State."

Rec., pp. 341, 352, 354.

This resolution was duly transmitted to the Governor of the State of Minnesota June 18, 1864.

The joint resolution of July 12, 1864, and the acceptance thereof by the State of Minnesota and the St. Paul and Pacific Railroad Company, duly established the intersection of the tenth standard parallel with the fourth guide meridian as the northern terminus of the said branch line.

July 2, 1864, the grant to the appellee was made by Congress; the material portions of said act are as follows, to wit:

"SEC. 3. *And be it further enacted*, that there be, and hereby is, granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph

line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said railway, every alternate section of public lands, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad, whenever it passes through any State, and whenever on the line thereof, the United States *have full title, not reserved, sold, granted or otherwise appropriated*, and free from pre-emption or *other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office;* and whenever prior to said time any of said sections, or parts of sections, shall have been *granted*, sold, reserved, occupied by homestead settlers, or pre-emted, *or otherwise disposed of*, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections; *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are on the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act; *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to the said Northern Pacific Railroad Company, or may consolidate, confederate or associate with said company, upon the terms mentioned in the first section of this act; *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof, a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest to the line of said road, and within fifty miles thereof, may be selected as above provided; *And provided further*, That the word 'mineral,' where it occurs in this act, shall not be held to include iron and coal; *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of said Northern Pacific Railroad.

"SEC. 4. *And be it further enacted*, That whenever said Northern Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States, and patents of lands, as aforesaid, shall be issued to said Company, confirming to said Company the right and title to said lands, situate opposite to, and coterminous with, said complete section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness, as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said Company conveying the additional sections of land as aforesaid, and so on, as fast as every twenty-five miles of said road is completed as aforesaid: *Provided*, That not more than ten sections of land per mile, as said road shall be completed, shall be conveyed to said Company for all that part of said railroad lying east of the western boundary of the State of Minnesota, until the whole of said railroad shall be finished and in good running order as a first-class railroad, from the place of beginning on Lake Superior to the western boundary of Minnesota: *Provided, also*, That lands shall not be granted under the provisions of this act, on account of any railroad, or part thereof, constructed at the date of the passage of this act.

"SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width, on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land *hereby granted* shall not be liable to *sale or entry, or pre-emption*, before or after they are surveyed, except by said Company, as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the

acts amendatory thereof, and of the act entitled, 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same hereby are, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said Company; and the reserved alternate sections shall not be sold by the Government at a price less than $2.50 per acre when offered for sale."

On March 3, 1865, Congress passed an act entitled "An act extending the time for the completion of certain railroads in the State of Minnesota, Iowa, and for other purposes," the material portions of which said act read as follows, to wit:

"SECTION 1. The quantity of land granted to the State of Minnesota to aid in the construction of certain railroads, as indicated in the first section of an act entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory * * *, approved March third, eighteen hundred and fifty-seven, *shall be increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts, and as hereinafter provided.*

"SEC. 2. *And be it further enacted*, that the proviso in the first section of the act aforesaid shall be so amended as to read as follows, to wit: '*Provided*, That the lands to be so located shall in no case be further than *twenty miles* from the lines of said roads and branches, to aid in the construction of each of which said grant is made, and said lands granted shall, in all cases, *be indicated by the Secretary of the Interior*.'

"SEC. 3. *And be it further enacted, that any and all lands heretofore reserved to the United States, by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operations of this act, except so far as may be found necessary to locate the route of said road through such reserved lands, in which case the right of way shall be granted subject to the approval of the President of the United States.* * * *

"*Provided, further*, That any lands which may have been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands may be located within the limits of this extension of said grant, or grants, shall be deducted from the full quantity of lands hereby granted, and that any lands which may have been so granted shall be strictly applied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law."

"SEC. 9. *And be it further enacted*, That the provisions of this act shall also be construed so as to apply and extend to that *portion of the line authorized to be vacated by the joint resolution approved July 12, 1862*, entitled 'A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes,' *notwithstanding the vacation thereof* by said State, as though said joint resolution had not passed, and also to the *line* adopted by said State in *lieu* of the portion of the line so *vacated*."

November 18, 1869, a map of a proposed line of the St. Paul and Pacific road was presented to the Secretary for approval. The line began at Crow Wing, on the easterly bank of the Mississippi river, crossed over to the westerly bank, running at almost due right angles westerly from the course of the road between St. Anthony and Crow Wing for a distance of about sixty miles, and having passed between Otter Tail and Rush Lakes, took another right angle almost due north for about sixty miles. (See Exhibit 7.)

Upon receipt of the said map the Secretary of the Interior addressed the Governor of Minnesota as follows:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., *December* 9, 1869.

"SIR: I have received your letter of the first ultimo, and on the thirteenth of that month a map, purporting to show the branch line or route of the St. Paul & Pacific Railroad from Crow Wing to the centre of the tier of townships numbered one hundred and forty-two.

"The route of this road, as prescribed in the act of Congress is from St. Anthony, '*via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North*, at such point as the legislature of said Territory may determine,' which latter point was fixed by the legislature at *St. Vincent*. The route delineated on the map, commencing at *Crow Wing, runs nearly due west for over sixty miles, and then runs in a nearly direct course toward St. Vincent.*

"Before accepting this map it is necessary that *satisfactory evidence* should be filed to show that a *direct route* between *Crow Wing* and *St. Vincent* is impracticable, and that the route as far as selected is the *most direct* and *practicable one on which a railroad can be constructed between those points.*

"The proof required is an *affidavit* of the engineer who made the *explorations* and *directed the survey*, with a *sworn copy of exploration*, with such other evidence as to the topographical nature of the country as may be accessible and applicable to the subject.

"I am sir, very respectfully, your obedient servant,

"J. D. Cox, *Secretary.*

His Excellency, Wm. R. Marshall, Governor of Minnesota, St. Paul, Minnesota."

Do., p. 127.

February 5, 1870, the said St. Paul and Pacific Railroad Company, in pursuance of the said order of the Secretary of the Interior, furnished the following proofs

"State of Iowa, } *ss.*
County of Cerro Gordo, }

"Francis W. Kimball, of Waltham, Minnesota, being duly sworn, deposes and says that he is a civil engineer by profession and occupation; that in July, 1869, he was appointed and directed by David C. Shephard, esq., Chief Engineer of the St. Paul & Pacific Railroad Company, to survey and locate a line or route for the railroad of said Company from Crow Wing to the centre tier of townships numbered one hundred and forty-two, and that, in pursuance thereof, he did make such survey and location, as indicated by a map prepared to be filed with the Gov-

ernor of the State of Minnesota; that the country lying to the northeast of Otter Tail Lake, and on the route of a direct line from Crow Wing to St. Vincent, embraced within townships *135* to *139*, and ranges *33* to *38*, is of a very marshy character, interspersed by myriads of small lakes and ridges, and the construction of a railroad line over it would be necessarily *expensive, so much so as to render it, in my opinion, impracticable as compared with the route located upon.* The country is unfit for habitation, and I estimate that two-thirds of its area is composed of tamarack swamps, morasses, and grass lakes or ponds, rendering a railroad line very circuitous to avoid them.

"F. W. KIMBALL.

"Subscribed and sworn to before me this twenty-third day of December, 1869.

"M. P. ROSECRANS,
[Notarial Seal.] "*Notary Public.*"

"STATE OF MINNESOTA, } ss:
County of Hennepin, }

"David C. Shephard, of Minneapolis, in the State of Minnesota, being duly sworn, deposes and says that he is Chief Engineer of the St. Paul and Pacific Railway Company; that he has read the annexed and foregoing affidavit of Francis W. Kimball, and knows the contents thereof, and that, to the best of his information, knowledge, and belief, the facts therein stated are true; and he further deposes and says that the affidavit of said Kimball is fully sustained and corroborated by lumbermen and woodmen familiar with the country mentioned in said affidavit, with whom he, the said Shephard, has had frequent interviews and conversations as to the character and topography of said country.

"DAVID C. SHEPHARD.

"Subscribed and sworn to before me this 5th day of February, A. D. 1870.

GEO. BRADLEY,
[Notarial Seal.] *Notary Public, Minnesota.*"

The section of country described in said affidavits is confined to a parallelogram thirty-six miles in width east and west, and thirty miles in depth north and south. The said survey, as shown by Exhibit 7, went due west, for the purpose of avoiding the said section of country mentioned in said proofs, sixty miles.

The east line of said parallelogram or objectionable country is twelve miles west of the fourth guide meridian, and the north line thereof is twelve miles south of the tenth parallel, and a direct line from St. Cloud, Crow Wing *via* said intersection to St. Vincent would pass to the east and north of said parallelogram or objectionable country, without touching the same.

February 16, 1870, the Secretary, after considering the proofs, disposed of the matter as follows:

"DEPARTMENT OF INTERIOR,
"WASHINGTON, D. C., *February* 16, 1870.

"SIR: Under date of the 11th inst., I received from you a letter addressed to you by D. C. Shephard, stating he sent affidavits to be used in securing the acceptance of a map of the St. Paul and Pacific Railroad.

"On the 9th of December last, the Governor of the State of Minnesota was informed that a map received from him of a portion of the line of said road, not being on the *direct route* from Crow Wing to St. Vincent, could not be accepted without it was shown by satisfactory evidence that the direct route was impracticable; that the evidence required was an affidavit of the engineer who made the survey, with a sworn copy of the exploration, and such other evidence as might be applicable to the subject.

"Two affidavits accompany Mr. Shephard's letter, signed respectively by Francis W. Kimball and himself. It appears from these affidavits that no *exploration or survey* was made on the *direct route;* that the character of the country was *deemed* to be impracticable, when *compared with that selected for the route of the road. This evidence does not meet the requirements of my letter, and cannot be received as establishing the impracticability of the direct route.*

"I would also call attention to another matter bearing upon the subject. The resolution of Congress, approved July 12, 1862 (12 Stat., 624), provided that this branch line should stop at the intersection of the tenth standard parallel with the fourth guide meridian, a point some fifty miles west of north from Crow Wing, in the direction of St. Vincent. The act of March 3, 1865 (13 Stat., 528), increased the original grant for this and other roads in Minnesota, and provided, in section nine, that it should be construed so as to apply and extend to that portion of the line vacated under said resolution.

"I am now inclined to think that the grant for this road north of the point at which the original grant was vacated must be held as conferred by the act of 1865. In that case it would follow that the *intersection* of the *tenth standard parallel* with the *fourth guide meridian* is a point at which the road, *in going to St. Vincent would be obliged to touch.*

"Very respectfully, your obedient servant,

"J. D. Cox,
"Secretary.

"Hon. D. S. Norton,
"U. S. Senate."

The 9th of November, 1870, the Governor addressed to the Secretary of the Interior the following letter:

"State of Minnesota,
"Executive Department,
"St. Paul, *November* 9, 1870.

"Hon. Columbus Delano,
"Secretary of the Interior,
"Washington, D. C.:

"Dear Sir: I am informed that the owners of the charter of the Second Division of the St. Paul and Pacific Railroad, commencing at Watab, and running northward *via* Crow Wing to St. Vincent, in this State, made an application to General Cox, your predecessor, to be allowed to *materially change the line of said road as located and established many years ago,* and that he took the responsibility to authorize the desired departure from the established line, notwithstanding the fact that those interested in it had but just applied to Congress for such authority and been refused.

"There are many settlers along the line of said road as now located, who made their settlements there in view of the location of the road, paid double price for their lands, and who have toiled and waited for years, and who would now be irreparably injured by the contemplated change, should it be consummated.

"The land grant railroad companies of this State have been very liberally dealt with, and it seems to many of our citizens that, while they retain all the lands and advantages derived from these grants and acts of Congress, they should be held to the restriction and guaranties provided for the safety, advantage, or security of the people, from whom they derive their bounties and privileges, and not be permitted to sacrifice towns and settlers alike, which have been built, or who have located, along the tract of the country which they were intended to benefit, as well as those lands they insist upon retaining, though all advantage which they were to confer in exchange be diverted or wholly withheld.

"Very respectfully, your obedient servant,

"HORACE AUSTIN.
"*Governor of Minnesota.*"

The 14th of November, 1870, the Secretary replied thereto as follows:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., *November* 14, 1870.

"SIR: I have received your letter of the 9th inst., stating you have been informed that the owners of the charter of the St. Paul and Pacific Railroad, commencing at Watab and running northward *via* Crow Wing to St. Vincent, in your State, made an application to my predecessor to materially change the line of said road from the established line; that he had authorized such change, which, you think, ought not to have been allowed.

"In reply, I have the honor to state that you have been misinformed as to the action of the late Secretary on this subject.

"On the 5th of November, 1869, there was received at this Department a map of the location of this road from Crow Wing to the centre of the tier of townships No. 142. It was certified to by Governor Marshall, under

date of October 27, 1869, as showing the line of road as definitely fixed in compliance with the acts of Congress and the act of the Legislative Assembly of Minnesota. *The late Secretary declined to accept the map, the location deflecting some sixty miles from a direct course toward St. Vincent; and he further expressed an opinion that, under the act of 1865, the road would have to touch at the intersection of the tenth standard parallel with the fourth guide meridian.*

"The Company, however, claimed that on this route it was impracticable to build a railroad, and asked for time in which to file maps, reports, and affidavits to show its impracticability, which was allowed. The time within which they were to be filed expires on the 20th instant. It is understood from your letter that your objection to a change in the location only applies to that portion of the road between Watab and Crow Wing.

"When the case is taken up for action, your objections to such change, if it is desired by the Company, will be duly considered.

"I am, sir, very respectfully, your obedient servant,

"C. DELANO, *Secretary.*

"His Excellency, HORACE AUSTIN,
Governor of Minnesota, St. Paul, Minnesota."

No other or further proofs concerning said map and route were furnished to the Secretary, and no further hearing had. The said map was never accepted, and no withdrawal of lands had ever been made along such proposed route.

The 31st day of May, 1870, Congress passed a resolution enlarging the indemnity limits of the appellee, the material portions of which said resolution are as follows, to wit:

"In the event of there not being in any State or Territory, in which said main line or branch may be located at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of

land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of July 2, 1864."

16 Stat., 379.

Prior to the 13th day of August, 1870, the appellee filed with the Secretary of the Interior maps upon which were designated the general route of the Northern Pacific road, and on said 13th day of August, 1870, the Honorable Secretary delivered the said maps to the Commissioner of the General Land Office, with the following order, to wit:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., *August* 13, 1870.

"SIR: I transmit herewith two maps showing the designated route of the Northern Pacific Railroad.

"You will immediately direct the proper local land officers in the States of Wisconsin and Minnesota to withhold from sale, pre-emption, homestead, and *other disposal* the odd-numbered sections not sold, reserved, and to which prior rights have not attached within twenty miles on each side of the route, and in like manner direct those officers in Washington Territory to withhold such odd-numbered sections as lie south of the town of Stilacome. *The unsurveyed as well as the surveyed lands will be included in the reservation, and you will direct the local officers to give notice accordingly, and as the township plats are received by them, they will make the proper notes of reservation thereon.*

"The withdrawal will take effect from the receipt of the order at the local office.

"Very respectfully,

"J. D. COX, *Secretary.*

"Hon. JOS. S. WILSON, *Com'r of the Gen. Land Office.*"

Exhibit "A," Rec., 281.

After the filing of the said maps, the appellee desired to amend the same and submitted proofs in relation thereto to the Secretary, and, on the 12th day of October, the Secretary disposed of thematter in favor of said appellee by an order of that date to the Commissioner of the General Land Office in the words and figures following:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., *October* 12, 1870.

"SIR: I transmit herewith an affidavit of the President and Engineer-in-Chief of the Northern Pacific Railroad Company, with a map designating the route of said company's road through Minnesota.

"The company, as shown by this map, have changed the route of their road in Minnesota. *The withdrawal heretofore ordered you will cause to be made to conform to the route designated on this map, and the lands now withdrawn and not within twenty miles of this route to be restored.* Very respectfully,

"J. D. COX,
"*Secretary.*

"Hon. JOS. S. WILSON, Com'r Gen. Land Office."
Rec., 281.

December 26, 1871, the Commissioner of the General Land Office, under directions from the Secretary of the Interior, made a further order and withdrawal for the benefit of appellee.

"DEPARTMENT OF INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *December* 26, 1871.

'REGISTER and RECEIVER, Alexandria, Minn.

"GENTLEMEN: Referring to my letter to you of the 15th September, 1870, transmitting a map of the designated line and 20-mile limit of the land grant of the Northern Pacific Railroad, and directing withdrawal of the land therefor, I now enclose you a map showing the line of the road as constructed, together with the definite 20-mile limits of the grant and the additional 10-mile indemnity limits as granted under the original act of

July 2, 1864, and also the additional 10-mile indemnity limits granted by the joint resolution of 31st May, 1870. These limits are respectively designated as the 20, 30 and 40-mile limits. I have also designated the limits fixed in my letter to you of 15th September, 1870, and you are now directed to withhold from sale or location, pre-emption or homestead entry, all the odd-numbered sections within the limits designated on the map herewith, and not heretofore withdrawn. * * *

"Very respectfully,

"WILLIS DRUMMOND,
"*Commissioner.*"

See Rec., p. 333.

The 3d March, 1871, Congress passed an act entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line, in consideration of the relinquishment of lands," as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the St. Paul and Pacific Railroad Company may so alter its branch lines that, *instead of constructing a road from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof,* a line from Crow Wing to Brainerd to intersect with the Northern Pacific Railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, *so as to form a more direct route to St. Vincent, with the same proportional grant of lands, to be taken in the same manner along said altered lines as is* provided for the present line by existing laws: *Provided, however,* That this change shall in no manner enlarge said grant, and that *this act shall only take effect upon* condition of being in accord with the legislation of the State of Minnesota, and *upon the further condition that proper releases shall be made to the United States by said Company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to market without further legislation.*

"Approved March 3, 1871."

16 Stat., p. 588.

On the 18th of November, 1871, the President and Chief Engineer of the St. Paul and Pacific Railroad Company presented to the Secretary of the Interior, for approval, a map of the line of route located under the said act of March 3, 1871.

The St. Paul and Pacific Railroad Company had not, up to that time, approved the map or the route designated therein, or filed with the Secretary its acceptance and release required by said act; and the said approval, acceptance, and release required by said act were not made until December 13, 1871, and were not filed with the Secretary of the Interior until December 19th of said year. The resolution of the Board approving said route and map, and authorizing the filing of the map is in the words and figures following, to wit:

"Meeting of the Board of Directors December 13, 1871.

"*Resolved*, That the survey and location of the railroad of this company from St. Cloud to St. Vincent, and from Crow Wing to Brainerd, made under the supervision of Chas. A. F. Morris, engineer, be, and the same is hereby, approved and adopted, and that duplicate maps of such survey and location, heretofore certified by him and by the President and Secretary of this company, dated respectively November 7 and November 22, 1871, be placed in the hands of the Governor of the State of Minnesota and the Secretary of the Interior, in compliance with the laws applicable thereto, and that said engineer's report of such location be recorded upon the books of this company."

Exhibit 43, Rec., 345.

This release recites the act of March 3, 1871, and quitclaims to the United States all lands along said *abandoned line from Crow Wing to St. Vincent* and *from St. Cloud to Lake Superior*.

See Rec., p. 342.

On the 20th of December, 1871, the Secretary approved the map, and transmitted the same to the Commissioner of the General Land Office, and informed him that the approvals and relinquishments required by the act of March 3, 1871, were delivered on the said 19th day of December, and that the map should be considered filed as of that date.

Prior to that time, to wit, November 18, 1871, the appellee filed with the Secretary of the Interior, a map of its definite route through the State of Minnesota, and the Secretary, after consideration thereof, found that the same was *duly certified*, and, on the 20th of November, transmitted said map to the Commissioner of the General Land Office for "appropriate action," and advised him that the map was "*duly certified.*"

At the time of the filing and approval of appellee's maps of general and definite route and the executive and legislative withdrawals thereunder, the *lands involved in this controversy were free from pre-emption, homestead or other claim,* and *were not withdrawn or reserved for any purpose whatever* other than for appellee.

In August, 1871, the St. Paul and Pacific Railroad Company acknowledged and recorded a mortgage covering its property of every description, and including the lands "to which said company will become entitled by the construction of said railroads under existing legislation, being *estimated* at 2,270,200 acres "*more or less.*"

See Rec., p. 429.

During the year 1871, a large portion of said bonds were sold. The purchasers of these bonds had constructive notice at the time of purchasing the same that the lands in controversy in this suit were within the limits of *appellee's grant,* and *withdrawn* and *reserved for its benefit,* and also had constructive knowledge of the fact that no withdrawals or reservation of lands had been

made for the benefit of the said St. Paul and Pacific Railroad Company, and that no withdrawals along the branch lines provided for in the act of March 3, 1871, had been made. Said withdrawals were ordered February 6, 1872, and revoked June 18, 1872, and restored September 13th of the same year. The order restoring said withdrawals provided, however, that said order "should not be regarded as a decision on the merits of the case."

In the year 1873 patents were issued to appellee for 29,782.50 acres of land in controversy in this suit.

See Rec., pp. 486, 487.

In the early part of said year the St. Paul and Pacific Railroad Company initiated a contest in the General Land Office of the United States against the appellee, selecting, for that purpose, certain of the lands now in controversy, amounting to 1,920 acres. The Commissioner of the General Land Office decided the question in favor of the appellee. The Secretary of the Interior decided that said lands should be awarded to the St. Paul and Pacific Railroad Company, upon it showing that it had fully complied with the law in the construction of the road. In said decision the Secretary held that the fixing of the general route of the road exempts the odd sections within the limits of the grant from sale, entry or pre-emption, but did not prohibit an appropriation of the lands for the satisfaction of a prior grant, and that the act of March 3, 1871, is an amendment of the act of March 3, 1857, and should be construed as though it were inserted in that act; and, therefore, that the lands in controversy were not reserved by the act of 1864, and the withdrawals thereunder before the passage of the act of March 3, 1871. The Secretary, in awarding the lands to the said St. Paul and Pacific Railroad Company, concluded as follows:

"Under these circumstances I must overrule the objection and leave the parties to their remedies in the courts if they desire to pursue the subject further."

Within two months after the rendering of the said decision, the Commissioner of the General Land Office instructed the local land office that the lands involved in this controversy were withdrawn by the act of July 2, 1864, along its entire line in Minnesota, from August 13, 1870, without requiring any notice on the part of the General Land Office.

The lands involved in this controversy were duly selected by the appellee.

See Exhibit 24, Rec., 331.
Exhibit 30, Rec., 334.
Schedules "C," "D," "F," "G," and "L," Rec. from page 198 to 219; also pages 135, 187, 188, 189, 192, and 554, and 296, 302.

During the year 1873, the legislature of the State of Minnesota passed an act extending the time for the completion of the St. Paul and Pacific Railroad Company's branch line from St. Cloud to St. Vincent and requiring the road to be constructed from St. Cloud to St. Vincent by way of Sauk Centre, Osakis, Alexandria, Fergus Falls, and Glyndon.

See Rec., p. 57.

The said railroad line, as shown on Exhibit 6, and presented to the Secretary of the Interior in November, 1871, and approved by him on December 20th of that year, was materially and substantially changed to conform to said act of the Legislature.

During said year, and after default in paying interest on said bonds by the St. Paul and Pacific Railroad Company, foreclosure proceedings were duly commenced, and, August 1, 1873, J. P. Farley, one of the defendants in the court below, was duly appointed receiver in said case.

March 31, 1874, such receiver requested the Secretary of the Interior to ask the Attorney-General of the United States to institute proceedings in the Federal Court to set aside and cancel the said patents issued and delivered to the appellee in 1873, as aforesaid and on April 3, 1875, the Acting Secretary said:

"The right of the said St. Paul and Pacific Railroad Company to said lands is not, in my judgment, so entirely clear as to require me to ask the Attorney-General to institute such proceedings, and the parties will accordingly be left to the remedies afforded by the courts."

See Rec., p. 285.

June 14, 1875, a patent was issued to the State of Minnesota, purporting to convey the lands in controversy in this suit, and other lands, for the use and benefit of the St. Paul and Pacific Railroad Company, and in March of the said year this suit was commenced.

After the commencement of this suit the State of Minnesota conveyed to the St. Paul and Pacific Railroad Company all her right, title, and interest in and to said land.

See Rec., pp. 96 and 97.

At the time of the commencement of said proceedings, George L. Becker, William G. Morehead, and Horace Thompson were trustees named in the mortgage of the St. Paul and Pacific Railroad Company. Soon thereafter the trustees were removed, and Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall were appointed, and on the 30th day of June, 1875, said Wetmore, Denny, and Pearsall were duly made parties defendant in said proceedings in place of said Becker, Morehead, and Thompson. The St. Paul and Pacific Railroad Company, and George P. Wilson, Attorney-General of the State of Minnesota, parties defendant in the Court below in this suit, were duly served with a summons herein in April, 1875.

December 24, 1875, the said parties having failed to appear and answer, the following order was made:

"On filing due proof of the personal service of the summons in this cause on the said defendant, the St. Paul and Pacific Railroad Company, and on the defendant, George P. Wilson, and more than twenty days having elapsed since the service of said summons on said defendant, and each of them, and neither of said defendants having appeared, on motion of George Gray, solicitor for complainant, it is ordered that the bill of complaint which is filed in this case be, and the same is hereby, taken as confessed by the said defendants, the St. Paul and Pacific Railroad Company, and George P. Wilson, Attorney-General of the State of Minnesota."

See Rec., p. 93.

In the year 1877, James J. Hill and others organized a syndicate for the purpose of purchasing part of the bonds of the St. Paul and Pacific Railroad Company, and during the said year purchased the majority thereof at thirteen and three-fourth cents, or less, on the dollar, with constructive knowledge of the executive and legislative withdrawals in behalf of appellee of the lands in controversy in this suit, and of the issuing of patents to about thirty thousand acres thereof to said appellee, and of the orders made in relation to said lands, and appearing of record in the Interior Department, and the commencement of this suit, and of the fact that appellee's bill had been taken *pro confesso* against the St. Paul and Pacific Railroad Company and the State of Minnesota, and the said syndicate, after the purchase of said bonds, with the actual knowledge that the lands of the said St. Paul and Pacific Railroad Company "*were estimated to amount to 2,217,200 acres, more or less,*" as stated in said bonds, at the price aforesaid, organized the St. Paul, Minneapolis, and Manitoba Railway Company for the purpose of purchasing the property of the St. Paul and Pacific Railroad Company, thereby purchasing the right to become a party in this suit.

December 27, 1875, the said defendant trustees, Wetmore, Denny, and Pearsall, commenced a suit in the Circuit Court of the United States for the District of Minnesota, against the St. Paul and Pacific Railroad Company *et al.*, for the foreclosure of said mortgage and sale of the property of the said Company. A decree in said proceedings was duly rendered, and the property of the said Company duly sold thereunder to the St. Paul, Minneapolis, and Manitoba Railway Company, and the said sale was thereafter on the 21st day of June, 1879, duly confirmed and a master duly appointed by the Court under said decree, conveyed the property of the St. Paul and Pacific Railroad Company to said purchaser.

Since said sale and conveyance, said appellants, the St. Paul and Pacific Railroad Company, Wetmore, Denny and Pearsall, have not had and have not now any interest in this suit.

April 7, 1884, the St. Paul, Minneapolis and Manitoba Railway Company filed a petition in the court below praying that an order be made in this cause making it a party defendant hereto, with leave to answer the said bill of complaint and to file a cross bill in respect to the lands patented as aforesaid to the appellee, and after due consideration thereof, the Court permitted said company to file a supplemental bill relating to said lands so patented to appellee, but denied the remainder of the prayer of said petition and refused to permit said company to answer appellee's bill of complaint or to become a party defendant in this suit.

The company filed said supplemental bill in pursuance of said order.

See Rec., pp. 107 to 144.

The Northern Pacific Railroad Company answered the same.

See Rec., pp. 146 to 169.

After the taking of the testimony and due consideration by the Court, the decree was entered awarding to the appellee the lands within the place limits of its grant and within the withdrawal limits of October 12, 1870, but denied appellee any relief as to lands within its indemnity limits and outside its said withdrawal limits, and dismissed the supplemental bill of said St. Paul, Minneapolis and Manitoba Railway Company.

This appeal is prosecuted from said decree.

Points and Argument.

Appellee claims the land in controversy in this suit upon two grounds:

First. Priority of grant.

Second. Priority of reservation.

Priority of Grant.

Priority of grant and not priority of location gives priority of right as to lands in place in the conflicting limits of various railroad grants.

Missouri, Kansas and Texas Railway Company *v.* Kansas Pacific Railroad Company, 97 U. S., 491.

Kansas Pacific Railroad Company *v.* Atchison, Topeka and Santa Fé Railroad Company, 112 U. S., 414.

St. Paul and Sioux City Railroad Company *v.* Winona and St. Peter Railroad Company, *Ib.*, 720.

Winona and St. Peter Railroad Company *v.* Barney and others, 113 *Ib.*, 618, 629.

Sioux City and St. Paul Railroad Company and others *v.* Chicago, Milwaukee and St. Paul Railway Company, 117 *Ib.*, 406.

United States *v.* Northern Pacific Railroad Company, 41 Fed. Rep., 847, 848.

The grant to the appellee was made by an act of Congress approved July 2d, 1864.

Ante, 5.

The indemnity limits of said grant were extended to forty miles on each side of the road where it passed through the State, by a joint resolution approved May 31, 1870.

Ante, 15.

The only acts of Congress affecting the appellants or their interest prior to the grant of the appellee are the acts of March 3, 1857, and the joint resolution of July 12, 1862.

Ante, 1, 4.

By the act of March 3, 1857, Congress granted to the Territory of Minnesota lands to aid in the construction of certain railroads, among which was a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, *with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, at such a point as the legislature of the Territory may determine.* The grant was of alternate sections, designated by odd numbers, for six sections in width on each side of the said main line and branch, with indemnity to be selected within fifteen miles. The provisions of said act of Congress were accepted by the Territory by an act passed May 22, 1857. Said act created a corporation known by the name of the Minnesota and Pacific Railroad Company and authorized it to construct said branch, and transferred to it all the interest and estate of the Territory in and to all lands granted by Congress for the purpose of aiding in the construction of said railroad and branch. The said act designated *St. Vincent*, on the Red River of the North, as the *Northern terminus* of said branch line.

Under such legislation the said branch line was to be constructed from St. Anthony, on the main line, via *St.*

Cloud and *Crow Wing to the said Northern terminus.* During said year the said line was located as far North as Crow Wing, and thereafter the road duly constructed upon such line.

Where the quantity of the land granted depends upon the length of the line, the road between the designated termini must be located and constructed upon the "*most direct and feasible route.*"

Southern Pacific R. R. Co. *v.* Orton, 32 Fed. Rep., 457–467.

The eastern line of the land, in controversy in this suit, is about eighty miles west of the direct line between Crow Wing and St. Anthony.

The preamble of the joint resolution of July 12, 1862, recites the fact, that St. Vincent had been designated by the Territory as the northern terminus of the line, and that the public interests required a change in the location of a part of said branch road, and said resolution authorized the said company, "*in lieu of that part of said branch line between the intersection of the tenth standard parallel with the fourth guide meridian and St. Vincent,* to locate and construct a branch having its southwestern terminus at a point on the existing branch line between the Falls of St. Anthony and Crow Wing, and extending in a northeastwardly direction to the waters of Lake Superior," with the right of indemnity between the fifteen mile limits thereof. The resolution provides, however, that it shall "*not take effect*" until the acceptance thereof has been duly filed in the General Land Office; and provides further, that after the filing of said acceptance the land north of the said *intersection of the tenth standard parallel with the fourth guide meridian shall be* "*disencumbered of the railroad grant.*"

Ante, 4.

March 6, 1863, the State of Minnesota, by an act of the Legislature, accepted the provisions of said joint resolution. The said act was duly filed in the General Land Office on the 28th of February, 1864, and on May 28th of said year the St. Paul and Pacific Railroad Company, which had, by virtue of the proceedings mentioned in said statement, become entitled to the grant made March 3, 1857, and the said joint resolution of July 12, 1862, duly accepted the terms, conditions, and provisions of said joint resolution. This joint resolution and the acceptances and approvals thereof by the State of Minnesota and the St. Paul and Pacific Railroad Company, duly and definitely established the *intersection of the tenth standard parallel with the fourth guide meridian as the northern terminus of the grant to the St. Paul and Pacific Railroad Company.* The point of intersection is about forty-five miles north and fifteen miles west of Crow Wing, and is on a direct line between Crow Wing and St. Vincent.

By the acceptances of said joint resolution the grant between St. Vincent and the intersection of the tenth standard parallel with the fourth guide meridian such lands became "disencumbered of the grant" and reverted to the United States, and, at the time of the grant to the appellee, the lands were public lands.

Under no possible construction could any of the lands involved in this suit be included in the grant to the St. Paul and Pacific Railroad Company, in existence at the time of the grant to the appellee. In order to include said lands within the existing grant at that date, it would have been necessary to construct the road of the St. Paul and Pacific Railroad Company from Crow Wing directly west at least 90 miles, and from that point directly north to a point six miles north of the tenth standard parallel, and from that point, by a line eighty miles in length, running south of east to the intersection of the tenth

standard parallel with the fourth guide meridian. Said line would be at least 220 miles in length, while the distance from Crow Wing to said intersection is about 50 miles.

The next legislation by Congress upon the subject of the grant for the appellant corporations is the act of March 3, 1865.

Ante, 8.

This act makes an *additional* and *new grant* of four sections per mile; and extends the indemnity limits from 15 to 20 miles. The ninth section of this act applies and extends to that portion of the line between the intersection of the tenth standard parallel with the fourth guide meridian and St. Vincent, vacated by the joint resolution of July 12, 1862, and the acceptance thereof, and also to the line running eastwardly to Lake Superior, authorized in lieu of said vacated line. This act made a new grant between St. Vincent and the said intersection of the tenth standard parallel with the fourth guide meridian.

The new grant between St. Vincent and the said intersection, and the four sections per mile, granted by the act of March 3, 1865, which the Secretary of the Interior was authorized to designate along the remainder of the branch of the St. Paul and Pacific Railroad Company are subsequent to the grant to the appellee.

St. Paul and Sioux City Railroad Company *v.* Winona and St. Peter Railroad Company, 112 U. S., 720.

Winona and St. Peter Railroad Company *v.* Barne and others, 113 U. S., 618.

Barney and others *v.* Winona and St. Peter Railroad Company, 117 U. S., 228.

Chicago, St. Paul, Minneapolis and Omaha Railway Company, sixth decision relating to public lands, p. 195.

The act of March 3, 1865, and the construction placed thereon by this court disposes of four-tenths of appellant's claim in favor of the appellee.

In 1869, without further Congressional action concerning appellants' grants, the St. Paul and Pacific Railroad Company surveyed a line from Crow Wing almost directly west about forty miles, and having passed between Otter Tail and Rush Lakes, thence at almost due right angles to the north for about sixty miles further. A map of this proposed route was prepared and transmitted to the Secretary of the Interior. This map is marked, "Exhibit Seven." Upon receipt of that map the Secretary of the Interior, among other things, said, "The route of this road as prescribed by the act of Congress is from St. Anthony, via *St. Cloud and Crow Wing*, to the navigable waters of the Red River of the North at such point as the legislature of said Territory may determine. Said point was fixed by the legislature at St. Vincent. The route delineated on the map commences at Crow Wing, runs nearly *due west for sixty miles* and then runs in a nearly direct line towards St. Vincent. Before accepting this map it is necessary that satisfactory evidence should be filed, showing that the *direct line* between St. Vincent and Crow Wing is *impracticable*, and that the route so far selected is the *most direct* and *practicable* one on which a railroad *can be constructed* between these points. The proof required is an affidavit of the engineer who made the *explorations and directed this survey*, with a sworn copy of the *explorations*, and with such other evidence as to the topographical nature of the country may be accessible and applicable to the subject."

In obedience to this order the Company, on February 5, 1870, submitted to the Secretary two affidavits.

Ante, 10, 11.

The affidavit of David C. Shephard contains nothing but hearsay testimony, is vague and indefinite, and need

not be further noticed. The other affidavit, that of Francis W. Kimball, reads as follows:

"STATE OF IOWA, }
County of Cerro Gordo, } ss:

"Francis W. Kimball, of Waltham, Minnesota, being duly sworn, deposes and says that he is a civil engineer by profession and occupation; that in July, 1869, he was appointed and directed by David C. Shephard, chief engineer of the St. Paul and Pacific Railroad, to survey and locate a line or route for the railroad of said Company *from Crow Wing to the center tier of township number 142*, and that in pursuance thereof he did make such survey and location, as indicated by the map prepared to be filed with the Governor of the State of Minnesota. *That the country lying to the northeast* of Otter Tail Lake, and on the route of a *direct line* from Crow Wing to St. Vincent, embraced within townships 135 to 139 and ranges 33 to 38, is of a very marshy character, interspersed by myriads of small lakes and ridges, and the construction of a railroad line over it would be necessarily expensive, so much so as to render it, in my opinion, *impracticable as compared with the route located upon.* The country is unfit for habitation, and I estimate that two-thirds of its area is composed of tamarack swamps, morasses, and grass lakes or ponds, rendering a railroad line very circuitous to avoid them."

It is to be noted that Mr. Kimball was not directed to survey a line on the *most direct route* between Crow Wing and St. Paul, but he was directed by the chief engineer to survey and locate a line or route from Crow Wing to the center tier of township number 142. No attempt was ever made to survey a line on a *direct route between Crow Wing and St. Vincent.* The proofs submitted do not show that a direct line is impracticable; they only show that in the opinion of Mr. Kimball it would be more difficult to build a road on a direct line than one through the country actually surveyed. The easterly line of objectionable country mentioned in said proof is twelve

miles west of the fourth guide meridian, and the north line thereof twelve miles south of the tenth standard parallel.

A railroad constructed on a direct line from Crow Wing to the intersection of the tenth standard parallel with the fourth guide meridian and thence to St. Vincent, would not pass within fifteen miles of said objectionable country. A road constructed on the route of said survey, as shown by exhibit seven, would be more than twenty miles longer than the road constructed on a direct line from Crow Wing to said intersection, and from said intersection to St. Vincent, and a grant for such line of ten sections to the mile would increase the quantity at least 128,000 acres. Manifestly the proofs furnished utterly fail to present a case authorizing a deflection from the direct line which would increase the grant to any such or considerable extent.

The Secretary, in passing upon these proofs, among other things, said: "Two affidavits accompany Mr. Shephard's letter, signed respectively by Francis W. Kimball and himself. It appears from these affidavits that no *exploration or survey* was made on *the direct route;* that the character of the country was deemed to be *impracticable,* when compared with that selected for the route of the road. *This evidence does nots meet the requirements of my letter, and cannot be received as establishing the impracticability of the direct route.*"

Ante, 12.

The Secretary, in his opinion, also called attention to the fact "That the joint resolution of Congress approved July 12, 1862, provided that this branch line should stop at the intersection of the tenth standard parallel with the fourth guide meridian, a point some 50 miles west of north from Crow Wing, in the direction of St. Vincent," and also said, that "the act of March 3,

1865, increased the original grant for this and other roads in Minnesota, and provided, in section nine that it should be construed so as to apply and extend to that portion of the line *vacated* under said resolution."

The St. Paul and Pacific Railroad Company, through its President and Chief Engineer, applied, after said decision, for various extensions of time within which to submit further proofs. No further proofs, however, were ever presented, and the said Exhibit No. 7 was never accepted or approved by the Secretary of the Interior. The said map was rejected by the Honorable J. D. Cox, Secretary of the Interior. Subsequently thereto the Honorablo Secretary Delano, replying to the letter from the Governor of the State of Minnesota, among other things, said: "On the 5th of November, 1869, there was received at this Department a map of the location of this road from Crow Wing to the centre of the tier of townships No. 142. It was certified to by Governor Marshall, under date of October 27, 1869, as showing the line of the road as definitely fixed in compliance with the acts of Congress and the act of the Legislative Assembly of the State of Minnesota. *The late Secretary declined to accept the map, the location deflecting some sixty miles from a direct course towards St. Vincent, and he further expressed an opinion that under the act of 1865, the road would have to touch at the intersection of the tenth standard parallel with the fourth guide meridian.*"

The only other Congressional action affecting appellant's interest is the act of March 3, 1871, which provides that "*instead of constructing a line from Crow Wing to St. Vincent and from St. Cloud to the waters of Lake Superior, it may locate and construct in lieu thereof a line from Crow Wing to Brainerd, to intersect with the Northern Pacific Railroad, and from St. Cloud to a point of intersection with*

the line of the original grant, at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent.—proportional grant of lands to be taken in the same manner along said alternate lines as is provided for the present lines by existing laws."

Ante, 18.

Said act clearly recognizes the existing lines and provides for others. Under it the lands were to be taken along the new line in the same manner that lands were authorized to be taken along existing lines, and in said act it is further provided, that the grant shall not be enlarged by the relinquishment of old grants and taking of new, and it is therein further enacted, "that this act shall *only take effect* upon condition of being in accord with the legislation of the State of Minnesota, and upon the *further condition*, that proper *releases* shall be made to the United States by said company of *all lands along said abandoned lines from Crow Wing to St. Vincent and St. Cloud to Lake Superior*, and that upon the execution of such releases said lands shall be considered as restored to the market without further legislation."

Under said act the lands to be abandoned extended from Crow Wing to St. Vincent and from St. Cloud to Lake Superior. St. Cloud is situated about fifty miles south of Crow Wing. The grant between said places was not and is not affected by said act, but a new grant from St. Cloud to St. Vincent, not theretofore mentioned in any act of Congress, is provided for by this act. By the terms of the act it is not to take effect until the railroad company had exercised the option conferred upon it by said law of surrendering one grant and taking another. The company did not file the releases therein provided for with the Secretary of the Interior until the 19th of

December, 1871, and the act did not take effect until that date.

Ante, p. , Exhibit 43.
Rec., 342 and 345.
State *v.* Barker, 26 Vt., 357.
Bull *v.* Reed, 13 Gratt., (Va.,) 78.
State *v.* Kirby, 29 Md., 85.
Case of the Aurora, 8 Cr., 382.

It is admitted that the date of the act and the time of its taking effect is subsequent to the grant to appellee, but it is contended that the said act, as well as the one of March 3, 1865, are simply amendments of the original act of March 3, 1857, and to be construed as though enacted at that early date. The language of the act, however, is not susceptible of such a construction. The act does not authorize the company simply to change the situation of existing lines, but it authorizes it to locate certain specified lines instead of existing lines. If such had been the intention, Congress would not have provided for the *abandonment of the old lines*, and it expressly provided for surrendering the grant "along said abandoned lines from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior." The abandonment was not to be along part of the lines from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior, but along the whole thereof. The abandonment of a thing is to give it up entirely, not to keep it in part, even in a modified form. A thing cannot be abandoned and at the same time retained, and the act was not to become effectual until said company had released all its existing rights all along the line from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior. A partial release of said land grants is not provided for. The acquisition by the company to the right of the grant along the new lines was concurrent with the release by

the company to the Government of the grant along the abandoned lines. From this fact alone it is quite clear that title to lands along the new lines must have its origin entirely in said act of March 3, 1871. "Laws are construed to be retroactive only when such intention is clearly expressed."

Chew Heong *v.* United States, 112 U. S., 536.

"Courts refuse to give statutes a retroactive construction unless the intention is so clear and positive as by no possibility to admit of any doubt."

Sedgwick Cons'n, 166.
Warren Manufacturing Company *v.* Insurance Company, 2 Paine. C. C., 517.
Ely *v.* Holton, 15 N. Y., 595.
Lessieur *v.* Price, 12 How., 59, 72, 74, 78.
Bagnell *v.* Broderick, 13 Pet., 436.
Rector *v.* Ashley, 6 Wall., 142, 149, 152.
Mackay *v.* Easton, 19 Wall., 615.
The Hot Springs Cases, 92 U. S., 698, 712.
St. Paul and Sioux City Railroad Company *v.* Winona and St. Peter Railroad Company, 112 U. S., 720.
Winona and St. Peter Railroad Company *v.* Barney *et al.*, 113 U. S., 618.
Barney and others *v.* Winona and St. Peter Railroad Company, 117 U. S., 228.

Mr. Justice Lamar, in construing the grants to the State of Wisconsin for railroad purposes, said: "The same act of 1864, which made the grant of ten sections in width to the Central Company, also made a like grant for the benefit of the road now owned by the Omaha Company; the effect of which grant to the last Company, it is now claimed, was an enlargement, to the extent of four sections, of the original grant of 1856; that the title of said Company to the enlarged quantity must be considered as taking effect, equally with the title to the less quantity, as of the date of the first act, both as to the United States

and Wisconsin Central Company; and, consequently, that any claims the latter may have to lands within the ten or twenty-miles limits of the grant of 1864 must be in subordination to the prior rights of the Omaha Company to lands within the same limits, which by virtue of the definite location of its road, followed by construction, took effect as of the date of the act of 1856. The cases of the Missouri, Kansas, and Texas Railway Co. *v.* Kansas Pacific Railway Co., 97 U. S., 491, and of the United States *v.* Burlington and Missouri R. R. Co., 98 U. S., 334, are relied upon to sustain this position.

"I cannot concur in this view The original grant of 1856, under which the Omaha Company now claims, was of the designated six sections, and of indemnity to be taken within 15 miles, to aid in the construction of a continuous railroad from Madison or Columbus, westward *via* Portage, to the St. Croix River, thence northerly to the west end of Lake Superior and to Bayfield. The act of 1864 broke the continuity of the road provided for in the former act, and granted the alternate odd-numbered sections of land, for ten sections in width, with indemnity limits of 20 miles, to aid in the construction of a road from the St. Croix River to the west end of Lake Superior, with a branch to Bayfield, and in section two made a similar grant in aid of a road from Tomaha to the St. Croix River, both grants stated to be upon the same terms and conditions as were contained in said act of 1856, provided that no indemnity lands were to be selected under the act of 1864 in lieu of lands received under the act of 1856. And the third section of the act of 1864 made for the first time the grant of lands for the road now known as the Wisconsin Central. Now, the grant here was entirely different from that which was being considered by the Supreme Court in the cited cases in 97 and 98 U. S. Reports, *supra*. In those cases the act of July 2, 1864, amending the act of 1862 (12 Stat., 489),

was being considered. The act of 1862, to aid in the construction of a railroad from the Missouri River to the Pacific Ocean, made a grant of five alternate odd-numbered sections per mile, to be taken within the limits of ten miles on each side of the road. The act of 1862 was amended by the act of 1864, "by striking out the word 'five,' where the same occurs, * * * and inserting in lieu thereof 'ten'; and by striking out the word 'ten' where the same occurs, and inserting in lieu thereof the word 'twenty.'" And the Supreme Court said in the case in the United States *v.* Burlington & Missouri R. R. Co., *supra*:

"Now, the enlargement of the grant by the act of 1864, is not made * * * by words of a new and additional grant, but simply by altering the number of sections granted and the distance from the road within which they are to be taken. The numbers in the first act, says the amendment, shall be stricken out and larger numbers substituted so that the act of 1862 must thenceforth be read, at least as against the Government and parties claiming under concurrent or subsequent grants, as though the larger number had been originally inserted in it. The Burlington and Missouri Railroad Company received its grant from the same act which declared that the act of 1862 in its grant to the Union Pacific should be thus read; it must therefore take its rights to the land subject to the claim of that company.

"If the Wisconsin act of 1864 had amended the act of 1856 by providing that 'six' should read 'ten' and 'fifteen' 'twenty,' the case would be exactly like those arising under the Union Pacific act, and the contention of the Omaha Company would be sustained. But inasmuch as the act of 1864 does not thus amend the act of 1856, while in effect increasing the grant thereunder, I must hold as to the overlapping lands derived under the respective grants made by the act of 1864, the different companies must be regarded as tenants in common."

8th Decisions Relating to Public Lands, pp. 202, 204.

The Supreme Court of New York in reference to an amendatory statute, said "the rule is considered settled

in this State that neither original statutes nor amendments have any retroactive force, unless in *exceptional cases; the legislature so declare.* The act before us contains no such declaration, and there seems no reason to give the amendment any other force than would be due to the provisions of the independent statute. The form of the amendment by declaring that the act of, etc., is so amended as to read in a given way, is not unusual and affords no grounds for the appellant's construction."

In the matter of the Miller Estate, 110 N. Y., 216 to 223.

McEwen *v.* Den., 24 How., 242–4.

But the act of 1871 does not purport to be an amendment of the act of 1857 and the act of 1865, or any other act. It is entitled "An act authorizing the St. Paul and Pacific Railroad Company to *change its line in consideration of the relinquishment of lands.*"

The consideration was not given until after the filing and approval of appellee's map of definite route through the lands involved in this controversy.

The act of March 3, 1871, is not retroactive; it does not even make a grant "*in presenti.*" It is not only limited by the reservations, conditions, and limitations in the act of March 3, 1857, and the joint resolution of July 12, 1862, and the act of March 3, 1865, and the act of July 13, 1866 (14 U. S. Stats., 97), but it is expressly enacted therein that it "*shall not take* effect until the *proper releases made to the United States by said Company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior were executed and filed.*"

Rice *v.* Minnesota & Northwestern R. R. Co., 1 Black, 502.

Schulenberg *v.* Harriman, 21 Wall., 44, 62.

Hannibal & St. Joseph Ry. Co. *v.* Missouri River Packet Co., 125 U. S., 260, 271.

Said releases of the land grant along said abandoned lines were not authorized or executed until December 13, 1871.

Appellee's map of general route was filed in October, 1870, and the lands within twenty miles thereof were withdrawn from sale, pre-emption, homestead, and *other disposal.*

Ante, 17.

Its map of definite route was filed and approved in November, 1871, and the road thereafter duly constructed and accepted. The place lands, at the time of the filing and approval of said map of general route and the making of said withdrawals thereunder, were free from pre-emption, homestead, and other claim, and were not reserved or withdrawn for any purpose whatever, and said land continued so to be free from any claim, other than that of the appellee, at the date of the filing and approval of its said map of definite route, and at that date a title in fee simple to said place lands vested in the appellee.

Buttz *v.* Northern Pacific Railroad Company, 119 U. S., 55.

Denny *v.* Dobson, 32 Fed. Rep., 899.

Northern Pacific Railroad Company *v.* Lilly, 9 Pac. R., 116.

Northern Pacific Railroad Company *v.* Majors, 2 *Ib.*, 322.

Priority of Reservation.

By section 1 of the act of March 3, 1857, it is provided as follows:

"*And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress *or in any other manner by competent authority*, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation

of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

11 Stat., p. 196.

Section 3 of the act of March 3, 1865, contains a clause in almost exactly the same language. It is as follows:

"*And be it further enacted, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or other purpose whatever, be, and the same are hereby, reserved and excepted from the operations of this act, except so far as may be found necessary to locate the route of said road through such reserved lands, in which case the right of way shall be granted subject to the approval of the President of the United States.*"

* * *

13 Stat., 526.

These provisos contained in the acts of 1857 and 1865 are to be deemed and taken as having been reenacted with the act of 1871, and as having been incorporated therein by express reference.

Endlich on the Interpretation of Statutes, sections 153 and 294, and notes.

Rex *v.* Fell, 1 B. & A., 380.

The exceptions contained in the acts of 1857 and 1865 *in hæc verba*, and which, by a reference, were incorporated in the act of 1871, would have been just as effectually *inferred* had no word of such exceptions been expresed in those acts.

Wilcox *v.* Jackson, 13 Pet., 498.

Leavenworth, Lawrence, and Galveston Railway Company *v.* United States, 92 U. S., 733.

Winona and St. Peter Railroad Company *v.* Barney, 113 U. S., 618.

Barney *v.* Winona and St. Peter Railroad Company, 117 U. S., 228.

On the 13th day of August, 1870, the Secretary of the Interior duly approved the maps of appellee's general route through Minnesota, and withdrew the lands within twenty miles thereof "from sale, pre-emption, homestead, or *other disposal.*" Thereafter, and prior to October 12, 1870, the Secretary, upon proofs presented by the appellee, permitted the said appellee to amend its said line of general route, and on the said 12th day of October, 1870, the Secretary filed and approved the map of said amended general route, and made the withdrawals theretofore ordered conform to such amended route.

Such executive withdrawal and the legislative withdrawal provided for in the sixth section of appellee's charter vested "at least an inchoate or inceptive title in appellee."

United States *v.* Brandestein and others, 32 Fed. Rep., pp. 738, 740.

Southern Pacific Railroad Company *v.* Wiggs & Newman, Copp's Land Owner, August 1, 1890, p. 105.

"After the general route shall be fixed, the odd sections are not liable to grant to other parties."

United States *v.* Northern Pacific Railroad Company, 41 Fed. Rep., 842.

Denny *v.* Dobson, 32 Fed. Rep., 899.

United States *v.* McLaughlin, 30 Fed. Rep., 147, 155.

United States *v.* Kate D. McLaughlin *et. al.*, 127 U. S., 428.

Northern Pacific Railroad Company *v.* Lilly, 9 Pac. Rep., 116.

Buttz *v.* Northern Pacific Railroad Company, 119 U. S., 55.

The legislative and executive withdrawals of October, 1870, were in force March 3, 1871, and at the date of the acceptance of said act, to wit, December 19, of said year,

and the said lands within the limits of said withdrawals, by reason thereof, were *reserved* and *excepted* from the grant made by the said act of March 3, 1871.

Mr. Justice Lamar, as Secretary of the Interior, in passing upon a similar reservation contained in the act of Congress of May 5, 1864, granting lands to the State of Wisconsin for railroad purposes, said: "Section six of the act of 1864, under which the grant to the Wisconsin Central is made, as before stated, declares that any and all lands reserved, etc., by an act of Congress, or in any manner for works of internal improvement, or for any purpose whatever, are hereby reserved and excluded from the operation of this act," and, by the granting section, a right to indemnity for such lands *reserved or otherwise disposed of is given. The rule that lands reserved or otherwise disposed of are not to be construed as included in a subsequent grant by Congress is as old as the land system itself, and is too firmly settled from the long line of decisions of the Supreme Court to admit of any question at this late day, and it would be a waste of time to quote authorities to sustain an assertion which ought not to be questioned.*

In the matter of the grant to the Chicago, St. Paul, Minneapolis and Omaha Railway Company, 6th Decisions relating to public lands, 201, this same question and case on petition for review was submitted to Secretary Noble, and the Honorable Secretary approved and followed the decision of Mr. Justice Lamar.

10th Decisions relating to Public Lands, pp. 74, 75.

Mr. Justice Harlan, Judge Bunn concurring, in an opinion filed September 15, 1890, in the case of Wisconsin Central Railroad Company *v.* Forsythe among other things, said:

"We proceed now to inquire whether the lands in dispute were in fact granted by the third section of the act of 1864. That section grants to the State to aid in the

construction of a road therein mentioned, every alternate section of public land designated by odd numbers for ten sections in width on each side of said road, and we have seen that the lands in dispute constitute part or some of these odd numbered sections, but the sixth section expressly reserves and excludes from the operation of the act not only mineral lands, but any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement or in any manner for any purpose whatever.

"If, when the act of 1864 was passed, those lands were reserved to the United States * * * in any manner for any purpose whatever, then they were expressly excluded from the operation of this act and therefore were not granted * * * the withdrawal of them from sale or location under the original laws providing for the administration of public domain, was a reservation of them to the United States and that was their condition when the act of 1864 was passed. * * * We think it difficult to resist the conclusion that Congress in the passage of the proviso had specially in mind this previous grant * * * and intended to reserve the land from other disposition."

Circuit Judge Sawyer, Mr. Justice Field concurring, in the case of the United States *v.* Curtner, construing the grant of the Southern Pacific Railroad Company, said:

"This map of general location was filed in the office of the Secretary of the Interior on December 8, 1864, and on December 23, 1864, the Secretary issued an order in pursuance of the acts of Congress, as they then were, withdrawing for twenty-five miles on each side of the designated line 'from sale, location, pre-emption, and homestead,' and forwarded it, together with a map showing the location and lands withdrawn, to the register of the land office of the district embracing the lands where it was received, filed, and promulgated on January 30, 1865; from which date, at the latest, no right other than that of the railroad company could be acquired or initiated in any of said odd sections of land. If, then, no right of the kind specified by the statute had legally

attached to the lands in question before the 30th of January, 1865, none could thereafter attach in favor of the State by selection, listing over by the Land Department *or otherwise, nor could Congress even authorize any subsequent legal transfer of title.*"

United States *v.* Curtner, 38 Fed. Rep., 1–8.

Wolcott *v.* Des Moines Navigation Company, 5 Wall., 681.

Homestead Company *v.* Valley Railroad, 17 Wall., 153.

Wolsey *v.* Chapman, 101 U. S., 755.

Litchfield *v.* County of Webster, 101 U. S., 773.

Dubuque, etc., Railroad *v.* Des Moines Valley Railroad, 109, U. S., 329.

Bullard *v.* Des Moines and Fort Dodge Railroad, 122 U. S., 167.

It is not necessary for us to present or argue the question as to the power of Congress to forfeit or interfere with the inchoate or inceptive right or title acquired by the appellee to the lands involved in this controversy, upon the filing and approval of its said maps of general route and the issuing of the order of withdrawal of October 12, 1870. The said legislative and executive withdrawals attached to said lands on that day.

The act of March 3, 1871, not only does not attempt to forfeit or interfere with such inchoate, inceptive, or any other rights, but expressly reserves and excepts from said grant all lands reserved by an act of Congress, or by other competent authority for any purpose whatever, with one exception, and that applies to the easement or right of way.

The foregoing propositions and authorities dispose of this entire controversy in favor of appellee, unless some or all the points made by appellants are sufficient to except all or part of the land involved in this controversy from the operation of appellee's grant.

The points made by the counsel of the St. Paul, Minneapolis, and Manitoba Railway Company (the only one of the appellants having any interest in this suit) in the Court below, and which, therefore, we presume they will make here, are as follows:

First. That the original grant from St. Anthony to St. Vincent was *via* Otter Tail and Rush Lakes, and not Crow Wing, and the intersection of the tenth standard parallel with the fourth guide meridian.

Second. That the word "granted," occurring in the exceptive portion of section three of the act of July 2, 1864, excepts the lands involved herein from the appellee's grant.

Third. That the executive withdrawal of October 12, 1870, was made without authority and is void, and the legislative withdrawals did not except the lands from the operation of the subsequent grant under the act of March 3, 1871.

Fourth. That the lieu or indemnity lands involved in this controversy have not been selected by appellee.

Fifth. That appellee did not, prior to 1872, file its map of definite route. That it only filed sections or portions thereof.

Sixth. That appellee, by reason of certain alleged representations and the ownership of the control of the majority of the stock of the St. Paul and Pacific Railroad Company during the years 1871 and 1872 is estopped and cannot now claim any of the land involved in this controversy.

We will consider said points in the order above mentioned.

First. *That the original grant from St. Anthony to St. Vincent was via Otter Tail and Rush Lakes, and not Crow Wing and the intersection of the tenth standard parallel with the fourth guide meridian.*

The counsel relies upon the following language in the act of March 3, 1871, to sustain said proposition, to wit: "From St. Cloud to the point of intersection with the *line* of the original grant at or near Otter Tail and Rush Lakes, *so as to form a more direct route to St. Vincent.*

"This act contains upon its face a confession of unprecedented ignorance on the part of Congress as to the existing status of things with which it was treating. Generally legislative bodies are presumed to be and, as a matter of fact, are familiar with the subjects and the circumstances concerning the subjects with which they deal, but this case is an exception. Congress evidently had not informed itself very clearly upon the geography of the State of Minnesota, and not at all upon the subject of the legislation of the State of Minnesota relating to these lines. It did not try to conceal its ignorance, but openly avowed it; hence very little weight is to be attached to such reference as the one now under consideration."

The application of the prior legislation to the map marked "Exhibit A" shows very plainly, as has been demonstrated, that the "line of the original grant" did not run anywhere near Otter Tail or Rush Lakes, unless a space of forty or fifty miles could be considered "near." Possibly Congress did consider that space one which could be designated by the term "near." But, whether or not Congress supposed the line of the original grant to run to or near to Otter Tail Lake, it certainly did not provide that the substituted line from St. Cloud to St. Vincent should *connect* with the original grant anywhere, and coincide with it, merely that it should *intersect* with it; that is, *run across it.* In other words, Congress merely named a point at which the new line was expected to touch, and did not provide for a connection of an existing grant with a new one.

It is argued by opposing counsel that, by the expression quoted, Congress recognized the propriety of the location of 1869. To this position there are two answers, either of which will completely dispose of it. In the first place, an examination of the prior legislation clearly shows no right to make the location of 1869. Hence, if a recognition in the act of 1871 gave any validity to the location of 1869, then, clearly, all rights which could be derived from such recognition must have had their origin in that very act.

It makes no difference what terms are used. If a right is given by the act of 1871, which did not exist prior to the passage of that act, that right is to be deemed to have originated in that act. Congress could not, in 1871, do anything more by means of a recognition of something not previously existing than by means of a direct and formal grant. The relative rights of the parties here are the same, whether the St. Paul and Pacific Company claims under a formal grant made by the act of 1871, or under a recognition contained in that act of rights which we know were before non-existent. So that whether the St. Paul and Pacific Company and its successors claim under a formal grant in the act of 1871, or under recognition in that act of a right which did not exist prior to that date, it all comes to the same thing in the end. The origin of the right, in either instance, is in that act, and not elsewhere or earlier.

The resolution of 1862 and the act of 1865, and the acceptance thereof by the State and by the St. Paul and Pacific Company, certainly and clearly establish the inter section of the tenth standard parallel with the fourth guide meridian as the northern terminus of the old branch and the southern terminus of the new grant made by the act of 1865, and the words "original grant," as used in said act of 1871, refer to the said joint resolution of 1862 and the said act of 1865, and the use of the said

words clearly shows that Congress was not fully informed as to the exact location of Otter Tail and Rush Lakes.

Even if it is a recognition of the validity of the line of 1869, or that the original line run by way of Otter Tail or Rush Lakes, that recognition did not go far enough westwardly by sixty miles to afford any succor to the claim here set up against the Northern Pacific. If that act be conceded to have recognized the right to locate the original line as far westwardly as Otter Tail or Rush Lakes it certainly and clearly contained no recognition whatever of the right to locate it as far west as Glyndon, and any recognition which did not carry the right as far west as the present location would have no efficacy whatever in conferring a right to the lands in controversy.

The act does not require the grant made by it to connect with "the original grant." It only requires the road from St. Cloud to intersect, *i. e.*, cross "the line of the original grant at or near Otter Tail or Rush Lakes, so as to form a more direct route to St. Vincent." The intersection is with the "*line* of the original grant," and not the grant.

Said line of road running between Otter Tail and Rush Lakes from St. Cloud to St. Vincent would intersect with the westerly *line* of said *original grant* about forty miles north of said lakes.

The distances from the intersection of the tenth standard parallel with the fourth guide meridian and Otter Tail or Rush Lakes to St. Vincent are about the same, and if the new grant, made by the said act of March 3, 1865, can, under any interpolation, be construed as extending from said Otter Tail or Rush Lakes or Glyndon to St. Vincent, and not from said intersection, then the question will be presented as to whether or not said act, as to the lands granted north of said intersection, had a retroactive effect and operation.

The decisions of this Court, heretofore cited, clearly establish the fact that the said act made a new grant as of the date thereof, as to the four additional sections along the line of all the roads provided for south of said intersection. The ninth section of said act recognizes that the original grant north of said intersection had been, by said joint resolution of July 12, 1862, *vacated*, and perhaps sufficient words are therein used to create a *new grant*, the same in extent and with the same conditions and limitations as that governing other portions of the grant to the said St. Paul and Pacific Railroad Company.

The joint resolution was not only not repealed by said act of 1865, but the new line of road and the grant created thereby were expressly recognized, and the grant thereof enlarged by said section nine.

The St. Paul and Pacific Railroad Company, on December 13, 1871, construed the act of March 3, 1871, as creating an entirely new grant from St. Cloud to St. Vincent. The releases executed by said St. Paul and Pacific Railroad Company and delivered to the Government includes all the lands between Crow Wing and St. Vincent, granted by its acts of March 3, 1857 and 1865 "*excepting therefrom, however, only the lands granted by the said act of March 3, 1871, to said Company along said new or altered lines.*"

By such releases and conveyances the Company conveyed to the Government all the lands and rights along said line north of Crow Wing then owned or claimed by it; except the rights acquired by it under the *new grant*, to wit, *the act of 1871.*

See Rec., p. 418, 419.

The practical construction placed upon the statute by the beneficiary thereof within a few months after its enactment, when all the facts in relation thereto and the history thereof were fresh in the memories of the officers of the company, is now entitled to some consideration.

The road as constructed does not pass near the line located in 1869, between Otter Tail and Rush Lakes, unless 27½ miles are considered near. The line as located commences 50 miles south of Crow Wing and runs in a westerly direction to Glyndon, and the point of intersection with appellee's grant at Glyndon is 110 miles west of Crow Wing, and 92 miles west and 7 miles south of the intersection of the tenth standard parallel with the fourth guide meridian, and it is not claimed in this case that the line of the St. Paul and Pacific Railroad Company, as constructed under the act of 1871, could have been located and constructed under any or all acts of Congress prior thereto.

Add to these facts the fact that the legislative and executive withdrawals for appellee attached to the land in controversy prior to the date of said act, and that there is nothing in said act which can be construed by any sort of interpolation into divesting or interfering with any of appellee's rights, the proposition is established that whatever claim appellants have to the lands involved in this controversy originates under the said act of 1871, and is therefore subsequent and subject to the rights and claims of appellee.

Appellants concede that their rights between St. Cloud and "the intersection with the line of the original grant" near said lakes were acquired under and by the said act of 1871, and are therefore subsequent to appellee's grant and location.

This disposes of the entire controversy as to all lands south of said intersection.

The easterly line or limit of the grant under the act of 1871, as located, intersects with the westerly limit of the grant under a direct line from Crow Wing to St. Vincent, about 40 miles north of Glyndon and north of the lands involved in this suit. If such is the intersection intended by Congress, the point now under consid-

eration is of easy solution, and establishes clearly that all of appellants' rights to lands involved in this controversy were acquired under the said act of 1871.

One familiar with the location of St. Anthony, St. Cloud, Crow Wing, or the intersection of the tenth standard parallel with the fourth guide meridian, and of Glyndon, St. Vincent, Otter Tail and Rush Lakes, can reach no other conclusion, after a careful examination of the various acts of Congress bearing upon the subject, than the one reached by Justice Brewer in the trial of the case below, that the words "intersection with the *line* of the original grant at or near Otter Tail or Rush Lakes so as to form a more direct route to St. Vincent," were *descriptive of the route only*, and it was not intended that the new grant should connect with the old and released grant at said lakes.

In this connection, it must be remembered that the act of 1871 does not make any change in the location of the original branch line between St. Cloud and Crow Wing, and that Crow Wing is made a point to and through which the road, as provided for by the act of 1857, joint resolution of 1862, and the act of March 3, 1865, must be constructed. That in all the legislation concerning the said roads there has been no change or modification of the original act requiring the road to be constructed to Crow Wing. It must be further remembered that that part of the line was definitely located in 1857, and the road thereafter constructed thereon, and that Crow Wing is located 60 miles almost directly east of said lakes, and that a railroad constructed upon a substantially direct line between Crow Wing and St. Vincent would not pass within 40 miles of said lakes. It must also be remembered that there is no evidence in this case, and none was presented to the Secretary of the Interior, warranting a substantial or material deflection from a direct line between said points. The road as

constructed to St. Vincent, however, does not commence at Crow Wing, but commences on the line of said branch 50 miles south of Crow Wing, and there is nothing in any act of Congress, prior to the act of 1871, authorizing or attempting to authorize the location and construction of a railroad through or near the section of country through which the road was located and constructed under the act of 1871.

Second. Appellants' counsel further argue "*that section three of appellee's charter excepts from its grant lands granted other railroad companies subsequent to July 2, 1864, and prior to the filing of appellee's map of definite route.*" The portion of the section relied upon reads as follows:

"Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt through the Territories of the United States, and ten alternate sections on each side of said railroad whenever it passes through States, and the United States have full title, *not reserved, sold, granted, or otherwise appropriated*, and free from preemption or other claims or rights at the time the line of said road is definitely fixed, and the plat thereof filed in the office of the Commissioner of the General Land Office."

Appellants' counsel contended in the court below, and we presume they will contend here, that the word "granted," found in said excepting or reserving provision of appellee's charter, is not found in any other congressional land grant, and was intended to enlarge the exceptions and create for appellee a reservation and exception other and different from that incorporated in other land grant acts.

With due deference to counsel, we are constrained to say that upon this question they have made a mistake of fact and law.

The grants to the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company of Cali-

fornia, California and Oregon, and Oregon and California Railroad Companies, in so far as the proposition now under consideration is concerned, are precisely like that of the grant to the appellee. The third section of the act of Congress, approved July 22, 1866, granting lands to the Atlantic and Pacific Railroad Company, contains the same reservations, restrictions, and limitations as that found in the third section of appellee's grant. The material portion of said third section of the Atlantic and Pacific Railroad Company's grant reads as follows:

"That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, * * * every alternate section of public land, designated by odd numbers, to the amount of * * * on each side of said railroad when it passes through any State, and whenever on the line thereof the United States has full title, not *reserved, granted, or otherwise appropriated*, and free from *pre-emption* or other claims or rights, at the time the line of the said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or part of sections shall have been *granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of*, other lands shall be selected by said Company in lieu thereof under the direction of the Secretary of the Interior."

11 Stat., 294.

The grant to the Southern Pacific Railroad of California was made upon the same terms and conditions as that to the Atlantic and Pacific.

14 Stat., 299, sec. 18.

The granting acts to the Oregon and California and California and Oregon Railroad Companies excepts lands "granted," "sold," "reserved," "occupied by homestead settlers," "pre-empted," "or otherwise disposed of."

14 Stat., 240, sec. 2.

See, also, 2 Test. Land Laws, 173–187–210.

It will thus be seen that the exceptive provisions of several of the greatest land grant railroads in the United States contain the said word "granted," and that appellant's counsel was mistaken in assuming that appellee's grant is the only one containing said word in the excepting portion of the act.

Justice Brewer in deciding this case in the court below for the first time passed upon the exact point here involved. Since that time, however, two judges of the United States Courts have passed upon the same question.

Circuit Judge Sawyer, in passing upon the title to lands within the conflicting limits of the grant to the appellee and of a subsequent grant to the Oregon and California Railroad, said:

"After the general route shall be fixed the odd sections are not liable to *grant* to any other party. * * * The grant to the Oregon and California Railroad Company was not made until May 4, 1870, long after the grant to the Northern Pacific and the filing of its first map of general location. * * * The grant to the Northern Pacific Railroad Company, therefore, first attached, and there was nothing left upon which the grant to the Oregon and California could operate, either at the time of filing of its map of general location, in January, 1872, or at the time of the granting act, May 4, 1870."

United States *v.* Northern Pacific Railroad Company, 41 Fed. Rep., 847, 848.

In the case of the United States *v.* Southern Pacific Railroad Company, Judge Ross, referring to lands within the indemnity limits of the Atlantic and Pacific Railroad Company, said:

"Had they been situated within twenty miles of the definite route of the Atlantic and Pacific Railroad Company they would certainly have fallen within the grant to that Company, and consequently have been excluded from the subsequent grant to the Southern Pacific Company."

39 Fed. Rep., 140.

See, also, Washington J. R. Co. *v.* N. P. R. R. Co., 21 Pacific Rep., 659.

A brief reference to the exceptive provisions contained in other granting acts will show conclusively the correctness of the decisions of Mr. Justice Brewer and Judges Sawyer, Ross, and Supreme Court of Idaho, and that the position of appellant's counsel is wholly untenable. In the first place, the language of the grant to the Northern Pacific Railroad Company is not peculiar or materially different from that of all other grants. They are substantially the same, and we will refer to but one.

The exceptive provision of the grant to the Union Pacific group of roads reads as follows:

"Five alternate sections per mile on each side of said railroad on the line thereof, and within ten miles on each side of said road, not sold, reserved, *or otherwise disposed of* by the United States, and to which a pre-emption or homestead claim may not have attached at the time the general route of the said road is definitely fixed."

It is well established that the definite location of a railroad within the meaning of land grant acts is not the tracing of a line upon the grant, or the projection of such line upon a map, but consists in the filing of a map, showing such line, in the Land Department of the United States. Therefore, the expression in the Union Pacific act "at the time the line of said road is definitely fixed" is the precise equivalent of the expression in the Northern Pacific act "at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office." Under the Union Pacific and appellee's granting acts, the lands which fall within the grant must be "public lands of the United States" at the time of the definite location of the lines of road respectively, as aforesaid. In both acts, in describing the lands which are to be excepted out of the grant, the terms "*sold*," "*reserved*," and "*pre-empted*" are used. The remaining words used respectively to designate the other class of lands excepted from the grant are

not identical. They are, however, extremely alike in force and effect, with this qualification, that if there is any difference in the breadth of signification, those of the Union Pacific are the broader of the two.

In the Union Pacific act those other words of exception are, "*or otherwise disposed of by the United States.*"

In the Northern Pacific act those other words are, "granted or otherwise appropriated."

The term "to dispose of," when applied to property, not only includes everything meant by the term "granted" and "appropriated," but very many other modes in which the status of property may be changed, in addition thereto. In fact, the term "to dispose of" includes every possible mode by which the title to property can be affected. In Webster's Dictionary that term is defined as follows: "To determine the fate of," "to exercise the power of control over," "to fix the condition, application, employment, etc., of," "to direct or assign for a use," "to exercise finally one's power of control over," "to pass over into the control of some one else," "to alienate," "to bestow," "to part with," "to get rid of."

There is no conceivable mode in which the title to property can be passed from one to another which does not come appropriately and by common usage under the term mentioned.

> The United States *v.* John P. Gratiot *et al.*, 14 Pet., 526.

When, therefore, Congress, in the Union Pacific act, used the term "*or otherwise disposed of*," it said something which at least included everything indicated by the terms *grant* and *appropriate*, employed in the Northern Pacific act; because to grant to or appropriate property, is merely to employ *one* or *two* of the *many* modes of *disposing of it.*

The term "grant," when used in connection with the disposition of public lands by Government certainly ap-

plies to such transfers as are here under consideration; but it also applies equally as well to many other modes of disposition. In fact, that term, "by common usage," is employed to designate every disposition of lands made by the Government to third parties, whether States, corporations, or natural persons, for which no direct pecuniary equivalent is received.

Thus, the donations to the States for the support of schools and universities; the transfer to the several States of the swamp lands within their respective borders; the donations to individuals by way of charity, as in the case of the "New Madrid grant" (so-called), all are designated in the public land parlance as "grants." Hence no mistake could be greater than the one into which learned counsel has fallen; namely, that of supposing Congress to have had in its mind concessions for other railroad enterprises when it used the term "granted," in the Northern Pacific act in the connection referred to.

There is nothing in the grammatical construction and arrangement of words in the passage above quoted from the Union Pacific act to make it differ from the Northern Pacific act; that is to say, that part of the sentence containing the following words: "*Not sold, reserved, or otherwise disposed of by the United States and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed*"—cannot be cut in two in the middle and the words, "at the time the line of said road is definitely fixed," be applied to the preceding terms in the latter half, and excluded from application to those in the former half. The words "at the time the line of said road is definitely fixed," were manifestly meant by Congress to apply to the terms, "sold, reserved, or otherwise disposed of by the United States," to the same extent as to those other terms, "and pre-emption or homestead claim." Otherwise there would be this absurdity, that the Government

would be powerless, after the approval of the executive had been once affixed to the granting act, to make a reservation of lands for any purpose whatever, whether military or civil, which a subsequent location of the road so as to embrace them within the limits of the grant, would not transfer to the company.

If such reservations could not lawfully be made, up to the time of the filing of the map of definite location in the Land Department, the company might easily acquire a large number of military posts, and their appurtenances, and an unlimited quantity of Indian reservation lands.

Such a construction would be contrary to all the usages of the Government; which have been to keep open the public lands for sale and reservation for public purposes, until the ascertainment of the precise tracts which are to pass under the grant, through the definite location of the line of the improvement.

It is therefore plain in respect to both the Union Pacific and Northern Pacific grants, Congress has used language broad enough to reserve full power over the land included within the grants, up to the time of the definite location of the road, to deal with them as it shall deem most proper for the furtherance of the public good.

This reserved power is certainly as broad in the case of the Union Pacific grant, as in that of the Northern Pacific grant; so that no argument, under this head, would be good as against the Northern Pacific grant which would not be equally effective as against the Union Pacific grant.

But, although it should be conceded that Congress has reserved very great powers to divert lands that would otherwise accrue to these companies under their grants, not very much progress towards the solution of the points here in controversy would be made; for the questions would yet confront us, in the first place, whether Con-

gress really designed to make the reservation so broad as the language used might be claimed to indicate; and, next, in case of any subsequent grant for another purpose, whether the power of diversion had actually been exercised by Congress in that particular instance.

Therefore, in respect to the grant to the State of Minnesota, in this case the question which the Court must decide is, not so much what Congress *could do* if it should see fit, but what it *actually did* in the premises.

This court, in the case of the Missouri, Kansas and Texas Railroad Company *v.* The Kansas and Pacific Railroad Company, said:

"Our judgment is that the title of the plaintiff, attaching to the lands in controversy by a location of the route of the road, being followed by a construction of the road, took effect by relation as of the date of the act of 1862, so as to cut off all intervening claimants, except in the cases where reservations were specially made in that act and the amendatory act of 1864. Such reservations operated as limitations on the grant. The limitation upon the grant in the act of July, 1862, extended to lands sold, reserved, or otherwise disposed of by the United States, or to which a pre-emption or homestead claim had attached, and to mineral lands. The amendatory act of July, 1864, declared that neither that nor the original act should defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, or include reservation or mineral lands other than those of coal or iron. As the sections mentioned could only be known when the route of the road was established, which might not be for years, the Government did not intend to withhold the lands in the meantime from occupation and sale, and thus retard the settlement of the country, nor exclude the lands from appropriation to public uses, and the object of the reservation was to protect the acquisition of rights in this way to lands falling within the limits of the grant, and to exclude from its operation lands specially reserved and lands of a special character, such as mineral lands other than those of iron and coal, the sale of which was seldom permitted anywhere, and swamp

lands. The grant made was in the nature of a float, *and the reservations excluded only specific tracts to which certain interests had attached before the grant had become definite, or which had been specially withheld from sale for public uses, and tracts having a peculiar character, such as swamp lands, or mineral lands, the sale of which was then against the general policy of the Government.* IT WAS NOT WITHIN ITS LANGUAGE OR PURPOSE TO EXCEPT FROM ITS OPERATION ANY PORTION OF THE DESIGNATED LANDS FOR THE PURPOSE OF AIDING IN THE CONSTRUCTION OF OTHER ROADS."

97 U. S., 491, 498–9.

This decision settled conclusively for the Union Pacific and other similar acts, and consequently for the Northern Pacific, two propositions—

First. That the broad language of exception in said acts is not to be taken quite literally.

Second. That it was not then the intention of Congress to include within the exceptions the right to subsequently withdraw lands, otherwise falling within the limits of the grant, for the benefit of other improvements.

As to those acts, this Court decided that certain grants by Congress are to be regarded as excepted from the operation of land grant acts. The swamp land grants are expressly mentioned in said decision as being excepted, and this Court in said case distinctly settled in the negative the idea that subsequent grants to aid in the construction of other railroads are included.

Congress in the first proviso to section 3 of appellee's granting act made a special provision for conflicting railroad grants. If further special provision for conflict with other grants was intended, Congress certainly "would have made such intention manifest by a further special proviso, or at least by language of unmistakable import." The proposition here under consideration, however, is disposed of in favor of appellee by the facts in this case.

The lands involved in this controversy were reserved by legislative and executive withdrawals when the act of March 3, 1871, passed, and the lands were therefore excepted and reserved from the operation of said act. The reservations and withdrawals continued and were operative and in full force when the map of definite route was filed and approved November 21, 1871. The said act of 1871 was not then in effect; it did not take effect until the filing of the releases, December 19, 1871.

Third. THAT THE WITHDRAWAL OF OCTOBER 12, 1870, WAS MADE WITHOUT COMPETENT AUTHORITY AND IS VOID, AND THE LEGISLATIVE WITHDRAWAL DID NOT EXCEPT LAND INVOLVED IN THIS CONTROVERSY FROM APPELLANT'S GRANT.

It is argued by the counsel for the appellants that the sixth section of the act of Congress of July 2, 1864, forbids the withdrawal by executive order of public lands from entry or other disposal. Said section is an affirmative act without negative words, and does not purport to take away from or deprive the Secretaries of the Interior of the control of the public lands of the United States, or of the right vested in said Secretaries to withdraw and reserve said public lands for public purposes.

Sedgwick on Const'n, 31,

Patterson *v.* Tatum, 3 Saw., 164.

Northern Pacific R. R. Co. *v.* Miller, 14 Copp's Land Owner, 5.

Denny *v.* Dobson, 32 Fed. Rep., 899.

Southern Pacific R. R. Co. *v.* Orton, 32 Fed. Rep., 457.

United States *v.* Northern Pacific R. R. Co., 41 Fed. Rep., 841–7.

Southern Pacific R. R. Co. *v.* Wiggs and Newman, 17 Copp's Land Owner, p. 105.

Wolcott *v.* Des Moines R. R. Co., 5 Wall., *supra*, 681.

A grant of lands to aid in the construction of a railroad is such a public purpose as will authorize the executive withdrawal of lands embraced therein.

Wolcott *v.* Des Moines Railroad Company, 5 Wall., 681–9.

Cedar Rapids Railroad Company *v.* Herring, 110 U. S., 27–39.

St. Paul, etc., Railroad Company *v.* Winona Railroad Company, 112 U. S., 720–32.

Kansas and Pacific Railroad Company *v.* Atchison Topeka and Santa Fé Railroad Company, 2 McCreary, 550–3.

St. Paul, Minneapolis and Manitoba Railroad Company *v.* Greenhalge, 26 Fed. Rep., 563–5.

Atchison, Topeka and Santa Fé Railroad Company *v.* Rockwood, 25 Kan., 208.

Wolsey *v.* Chapman, 101 U. S., 755; 8 Op., 416; 16 *Ib.*, 87.

March 19, 1865, the Secretary of the Interior placed a *contemporaneous and practical construction* upon the provisions of appellee's charter here under consideration, and ordered the withdrawal of the lands along part of its route. (See letter of the Secretary of the Interior to Acting Commissioner Joseph Wilson of March 9, 1865, and the Commissioner's reply thereto, dated June 2, 1865. *From that date to the present time the Interior Department has followed said contemporaneous and practical construction, with one exception.* (See orders of withdrawal on general route of the Northern Pacific road, addressed to local land offices under date of September 15, 1870, as follows: Bayfield, Wisconsin; Duluth, Taylor's Falls, St. Cloud, Alexandria, in Minnesota. Orders of withdrawal of November 7, 1870, on amended line of general route addressed to Duluth, Taylor's Falls, St. Cloud, and Alexandria, in Minnesota. Orders of withdrawal on general route of August

20, 1870, addressed to Vancouver, Washington Territory, also of November 21, 1870; also of August 1, 1871, addressed to Walla Walla, Washington Territory. Order of withdrawal of place, first and second indemnity lands of December 12, 1871, addressed to Duluth, Minnesota; same to Taylor's Falls, Minnesota, dated December 16, 1871. Same to St. Cloud and Alexandria, Minnesota, dated December 26, 1871. Orders of withdrawal on general route addressed to Olympia, Washington Territory, September 20, 1870, November 21, 1870, February 10, 1872, February 14, 1872, October 6, 1873, and July 3, 1879; same to Oregon City, Oregon, of September 20, 1870, February 9, 1872, February 14, 1872; same to La Grande, Oregon, February 9, 1872, February 14, 1872, and on amended line of general route April 15, 1872; order of withdrawal on general route of March 30, 1872, to Pembina, Dakota Territory; same to Helena, Montana Territory, of April 22, 1872. Order of withdrawal on general route addressed to Lewiston, Idaho, April 15, 1872. Orders of withdrawal on amended lines of general route addressed to Lewiston, Idaho, October 28, 1876; same to Walla Walla, Washington Territory, of March 30, 1872; same to Walla Walla on general route of branch line of November 1, 1873; same on amended general route of branch line of July 3, 1879. Order of withdrawal of place and indemnity lands on definite location addressed to Pembina, Dakota Territory, June 11, 1873; same addressed to Olympia, Washington Territory, dated January 21, 1874; same on same day to Oregon City, Oregon; same to Olympia, Washington Territory, November 12, 1874; same to Lewiston of November 9, 1880, and July 31, 1883; same to Walla Walla, Washington Territory, of November 17, 1880; August 16, 1881, and January 8, 1885; same to Colfax, of November 13, 1880; same to Spokane Falls, of June 9, 1884, and September 1, 1884; same to Yakima, Washington Territory, of November 18, 1880, and January 6, 1885; same to Vancouver, Washington Territory, of December

1, 1884, and January 8, 1885; same to Bismarck, Dakota Territory, of August 23, 1880, and November 29, 1880; same to Helena, Montana Territory, of June 8, 1883; July 30, 1883; September 25, 1883, and February 20, 1885; same to Miles City, of September 29, October 8, and November 14, 1883. Order of withdrawal on line of definite location, withdrawing lands in 20, 30 and 40-mile limits, addressed to Bayfield, Wisconsin, January 5, 1883; same to Duluth, Minnesota, January 5, 1883. Orders of withdrawal on line of definite location addressed to Bayfield, Wisconsin, June 22, and October 20, 1883; same to Duluth, Minnesota, June 18, and October 11, 1883. Order of withdrawal of place and indemnity lands on line of definite location of branch line, addressed to Olympia, Washington Territory, November 28, 1884, and January 5, 1885; same addressed to La Grande and to Dalles, Oregon, January 8, 1885. Order fixing terminal limit at Ashland and recognizing validity of withdrawals of February 3, 1887. See also letters of Secretaries of the Interior, and Acting Secretaries of the Interior to Commissioner, of the following dates; August 13, 1870; August 16, and October 12, 1870; November 20, 1871; February 21, 1872; May 26, August 20, and September 12, 1873; May 14, 1874; November 24, 1876; July 19, 1880; August 15, 1870; June 11, 1879; letter of Secretary Teller to Commissioner McFarland, dated May 17, 1883, (2 L. D., 512;) circular of May 22, 1883, (2 L. D., 517;) letter of July 11, 1883, (10 C. L. O., 154;) letter of Secretary Lamar to Commissioner Sparks, (Atlantic and Pacific Railroad Company, 4 L. D., 458; Fort Boise Hay Reservation, 6 L. D., 18;) letter of Secretary Lamar to President Cleveland, May 20, 1887, (6 L. D., 77;) approval of the same by President Cleveland, (*id.*, 80;) rule to show cause, May 23, 1887, (6 L. D., 80; same, *id.*, 82; Atlantic and Pacific Railroad Company, *id.*, 84;) letter

of Acting Secretary Muldrow to Commissioner Sparks, (6 L. D., 144;) letter of Secretary Lamar to Acting Commissioner Stockslager, of November 19, 1887, (6 L. D., 328.) The same contemporaneous and practical constructions were placed upon like charters of the Southern Pacific and Atlantic Railroad Companies. March 22, 1867, the place and indemnity lands along the line of the Southern Pacific were withdrawn. February 14th, within less than a year after the passage of the act granting lands to the Atlantic and Pacific Railroad Company, a withdrawal of place and indemnity lands was ordered along a portion of that road. April 30, 1867, another withdrawal of indemnity lands was ordered for said Atlantic and Pacific Company. April 22, 1872, a third withdrawal of place and indemnity lands for this road was ordered, and on May 23, 1872, a fourth withdrawal of place and indemnity lands was ordered. May 3, 8, and 17, 1872, further withdrawals of place and indemnity lands for said road were ordered. A similar construction was placed upon the Union Pacific, Central Pacific, Oregon and California acts. Not only has this contemporaneous construction of said acts been recognized and upheld by the Department of the Interior in making the orders aforesaid, but the question as to the validity of these withdrawals has been repeatedly presented to the Secretaries of the Interior and officers of the Department, sitting in their judicial capacity, to determine contests arising between settlers and the railroad companies. We will only refer to those in which the appellee's grant has been directly passed upon. Secretary Kirkwood, in construing appellee's grant, said:

"The first observation upon this section is, that while it does not in terms direct the Secretary of the Interior to withdraw lands for the benefit of the company, the duty and authority to do so are clearly implied. * * * If, however, any question that executive authority existed to make the withdrawal of April 22, 1872, arises

in the mind of anyone, reference to section 2281 Revised Statutes, and to the decision of the Supreme Court in Wolcott *v.* Des Moines Company, 5 Wall., 681, will settle it affirmatively."

Trepp *v.* N. P. R. R. Co., 1 Decisions Relating to Public Lands, 382.

Secretary Teller upon the same subject said:

"Under the scheme of the granting act to the Northern Pacific Railroad Company, it designates indemnity limits, and under the provision in the act that lands in lieu of those lost in place shall be selected under the direction of the Secretary of the Interior, it has come to be regarded as the duty of the Secretary to withdraw from other disposition a sufficient quantity of lands within indemnity limits to make good those lost in granted limits. * * * To protect the railroad company, the Secretary may be required to withdraw all the lands within the indemnity limits, or a part only."

Prest *v.* The Northern Pacific Railroad Company, 2 Decisions of the Department of the Interior and General Land Office, p. 508.

In 1883, the Secretary of the Interior, in issuing instructions for the withdrawal of Northern Pacific lands, among other things, said:

"I am advised by your letter in the case of the Northern Pacific Railroad, withdrawals of lands within the indemnity limits have followed the filing of the maps of definite location to the full extent of both acts (act of July 2, 1864, and Joint Resolution of May 31, 1870) within the States, but within the Territories only to the extent provided in the first act. Neither act contains any express provisions for the withdrawal of lands within the indemnity limits.

"In many instances acts making grants in aid of the construction of railroads, provide for an executive withdrawal of the lands within the granted limits.

"These acts do not, however, generally provide for an executive withdrawal of lands within the indemnity limits; where such a provision exists it is found in general terms, which declare that it shall be the duty of the Secretary to withdraw from market the lands embraced within the provisions of the act.

(13 Stat., 536; 14 Stat., 87.)

"The grant to the Northern Pacific does not provide either specially or in general terms for an executive withdrawal of lands within either granted or indemnity limits. The power of the Executive Department of the Government, however, to withdraw lands for the benefit of the grant, within the *granted limits*, without any direction expressed in the act, is now too well settled to be questioned.

(8 Opin., 244; 16 *Ib.*, 87; Wolcott *v.* Des Moines, 5 Wall., 681; Wolsey *v.* Chapman, 101 U. S., 755.)

"Such power has been recognized by Congress (10 U. S. Stat. at Large, 269), and had been exercised by the Land Department for a long time before the Northern Pacific act was passed, and must have been well understood by Congress at the time of the passage of that act. This Department has held that it had such authority in the case of the Northern Pacific grant. (Copp's P. L. L., 377.) The object of the withdrawal is to prevent private appropriation of the granted lands, which would defeat the object of the grant. (5 Wall., *supra*, 688.) By parity of reasoning, the authority to withdraw lands within the indemnity limits must follow. Such authority has been repeatedly exercised by the Land Department in reference to the Northern Pacific and other indemnity lands. I am convinced that the persuasive force of the acts passed for the Northern Pacific require such withdrawal to be made as will place beyond reasonable doubt any possibility of a miscarriage of their evident intent with respect to its lands. In reply to your suggestion whether the withdrawals in the indemnity limits of this grant are to stand as far as made, I have to say that I am of the opinion that such withdrawals should, at least for the present, be maintained. I am further of the opinion that, upon filing maps of approved definite location, withdrawals of lands within the indemnity limits should be

made by you to the extent of the first indemnity limits. Such action will be in accordance with the practice heretofore pursued by your office in reference to withdrawals under the grant in question."

Northern Pacific R. R. Co. *v.* Pressey, 2 Decisions Relating to Public Lands, 551.

Monagle *v.* Northern Pacific R. R. Co., 2 *Ib.*, 529.

Northern Pacific R. R. Co. *v.* Mansfield, 3 *Ib.*, 303.

Southern Pacific R. R. Co., 2 Brainerd's Legal Precedents, 351.

Elwell *v.* the Northern Pacific R. R. Co., 5 *Ib.*, 142.

Northern Pacific R. R. Co., 5 Decisions Relating to Public Lands, 193.

Jacobs *v.* Northern Pacific R. R. Co., 6 *Ib.*, 223.

July 25, 1866, over a year after the Northern Pacific act had received the construction above mentioned by the Department, Congress made the grants above referred to to the Southern Pacific and Atlantic and Pacific railroad companies, using the same terms as were employed in the grant to the Northern Pacific Company (14 Statutes at Large, 292.) February 14, 1867, within less than a year after the passage of said acts the executive placed the construction here contended for thereon by withdrawing place and indemnity lands for the Atlantic and Pacific Railroad Company. March 22, 1867, it again placed that construction upon the act by similarly withdrawing lands for the Southern Pacific Company. July 1, 1868, over three years after the act had received said construction, and more than a year after the same construction had been placed upon the Atlantic and Pacific acts, Congress extended the time for the completion of the Northern Pacific Railroad (15 U. S. Stat., 255.) July 25, 1868, Congress passed an act extending the time within which the Southern Pacific Company should be required to complete its road (5 U. S. Stat., 187.) July 14, 1868, the Secretary revoked the order of withdrawal of March 22, 1867.

August 14, 1868, he suspended said revoking order of July 14, and on November 2, 1869, he revoked said suspension of August 14th. November 11, 1869, he confirmed his order of November 2d, and ordered the lands restored to market after sixty days' notice; but December 15, 1869, he again ordered that this restoration should be suspended, and the said last order continued in force until August 15, 1887. Before the enactment of appellee's grant a clause in the Union Pacific railroad act similar to section six of appellee's act had been construed by the executive as not prohibiting the withdrawal of lands along said line by executive order. The same construction had been placed upon the grants to the California and Oregon Railroad Company, 14 U. S. Stat., 239). Also upon the Oregon and California Railroad grant (14 U. S. Stat., 239). Orders of October 29, 1867, January 31, April 7 and July 12, 1870, withdrawing place and indemnity lands. May 31, 1870, more than five years after the construction we now contend for had first been placed upon the Northern Pacific act, and after that construction had been time and again placed upon similar acts granting lands to the Atlantic and Pacific Company, Southern Pacific Company, and other railroad companies, and after that construction had become well settled as the law of the Interior Department, Congress authorized the Northern Pacific Railroad Company to mortgage its lands, extended its indemnity limits from 30 to 40 miles, and distinctly settled that it had a grant from Portland, Oregon, to the Puget Sound (16 Stat., 378). At the time of the adoption of said resolution of May 31, 1870, it must be considered that Congress knew of the settled construction placed upon appellee's and similar grants, and intended to, and did thereby adopt the same. The acts of Congress making the grants to the Atlantic and Pacific and Southern Pacific Railroad Companies in

the same terms as contained in the grant to the Northern Pacific Company, after the said contemporaneous and practical construction had been placed thereon, must be construed as a re-enactment thereof, and the construction thereby became a part of the acts, and especially is this true of appellee's grant when we consider the circumstances and conditions under which the joint resolution of May 31, 1870, was passed. At that time, the construction of the sections now under consideration had become well settled, and such a clear and well-settled construction is absolutely binding upon the Courts when called upon to construe the re-enacted or amended statute.

Endlich on Stats., secs. 365, 366, 367, 368, and 369.

Goodall *v.* Tuttle, 3 Biss., 229.

United States *v.* Tilden, 10 Ben., 170.

United States *v.* Gilmore, 8 Wall., 330–2.

Wolcott *v.* Des Moines R. R. Co., 5 Wall., 681–4–7.

Williams *v.* Baker, 17 Wall., 144–152.

Of a practical departmental construction that has obtained for less period than has that for which we now contend, this Court said:

"*Such has been the uniform construction given the acts by all the Departments of the Government. Patents have been issued, bonds given, mortgages executed, and legislation had upon this construction. This uniform action is as potential and as conclusive of the soundness of the construction as if it had been declared by judicial decision. It cannot, at this day, be called into question.*"

United States *v.* the Burlington and Missouri River R. R. Co., 98 U. S., 334–341.

Kansas and Pacific R. R. Co., *v.* Atchison, Topeka and Santa Fé R. R. Co., 112 U. S., 414–418.

Hahn *v.* United States, 107 U. S., 402–6.

Brown *v.* United States, 113 U. S., 568–570.

Edwards *v.* Darby, 12 Wheat., 206–210.
Smythe *v.* Fisk, 23 Wall., 374–382.
United States *v.* Pugh, 99 U. S., 265–9.
United States *v.* Moore, 95 U. S., 760–3.
United States *v.* Alexander, 12 Wall., 177–9.
Peabody *v.* Stark, 16 Wall., 240.
Northern Pacific R. R. Co., *v.* United States, 36 Fed. Rep., 282–5.
Opinion of Assistant Attorney-General Smith in construing the Northern Pacific Land Grant, Copp's Public Land Laws, p. 380 (First Ed.)
Opinion of Attorney-General Devens construing the Southern Pacific Land Grant, 16 Op., 87.

Judge Sawyer, in the case of the United States *v.* The Northern Pacific Railroad Company, held that withdrawals on behalf of the Northern Pacific Railroad Company protected "the lands included therein from subsequent grant by Congress."

41 Fed. Rep., 842–7.
See also Northern Pacific Railroad Company *v.* Guilford Miller, 14 Copp's Land Owner, 5–6.
Butts *v.* The Northern Pacific Railroad Company, 119 U. S., 55.

It is clear from the foregoing facts and authorities that the executive withdrawals of the land in question from "sale," "pre-emption," "homestead," and "other disposal," were made by competent authority. This question, however, is not very material in view of the proviso to section one of the act of March 3, 1857, and section three of the act of March 3, 1865, which were, by the act of March 3, 1871, made applicable to the lands in question, and they except from the operation of said act any and all lands reserved by any act of Congress. The lands involved in this controversy were reserved by

virtue of section six of appellee's charter from and after the date of the filing and approval of its map of general route, to wit, October 12, 1870. The question as to the extent of the reservation provided for in said section six is immaterial, although the reservations there provided for, to wit, "sale," "entry," or "pre-emption," are very comprehensive words.

The act of Congress under which appellant claims, expressly excepts therefrom all lands "reserved by any act of Congress for *any purpose whatever.*" The lands in question were withdrawn by virtue of said section six of appellee's grant for *a purpose.* It is argued, however, that the executive withdrawal is broader than the legislative withdrawal, and that said section six is a limitation upon the power of the Secretary of the Interior, or any other officer of the Interior Department, to order a withdrawal of lands, more comprehensive in its terms than that provided for in section six.

Conceding that section six, which confers an affirmative right without negative words, might have been construed as limiting or repealing the power and authority vested in the Secretary under and by general law, said contemporaneous, practical and legislative construction placed upon said section by the Interior Department and Congress, and followed for more than 20 years, must now be held by the Courts to be the law of the case, and to establish conclusively the competency of the Secretary of the Interior to make withdrawals, notwithstanding section six in appellee's charter, and similar provisions in the charters of the Atlantic and Pacific, Southern Pacific, and other railroad companies. The Court must presume that Congress had knowledge of the extent of the withdrawal, as well as of the withdrawal itself, and that in extending, amending and modifying the grants aforesaid, Congress recognized the rights of the Secretaries to withdraw the lands of appellee, and other rail-

road companies similarly situated, from *other disposal*. We conclude, then, that the lands in question were excepted from appellant's grant for two reasons:

First. The legislative withdrawal provided for in section six, and the exceptive provisions in appellant's grant.

Second. The executive withdrawal of October 12, 1870.

See opinion of Mr. Justice Harlan in Wisconsin Central Railroad Company *v.* Forsythe, filed September 15, 1890 (not printed).

Northern Pacific R. R. Co. *v.* Lilly, 9 Pac. R., 116–119.

Northern Pacific R. R. Co. *v.* Majors, 2 Pac. R., 322.

St. Paul, Minneapolis and Manitoba R. R. Co. *v.* Greenhalgh *et al.*, 26 Fed. Rep., 563.

Denny *v.* Dobson, 32 Fed. Rep., 899–906.

United States *v.* The Northern Pacific R. R. Co., 41 Fed. Rep., 842–7.

United States *v.* Curtner, 38 Fed. Rep., 1.

FOURTH. THAT THE LIEU OR INDEMNITY LANDS INVOLVED IN THIS CONTROVERSY HAVE NOT BEEN SELECTED BY APPELLEE.

It is conceded that the title to such lands vests in the Railroad Company upon selection in the manner prescribed in the granting act, and unless the appellee has made such selections, or shown a sufficient excuse for its failure so to do, it cannot recover said indemnity or lieu lands. This question is not a very material one, in so far as the appellants are concerned. It is clearly established in this case, as heretofore shown, that the lands within twenty miles of the amended line of general route, approved October 12, 1870 (which includes all the lands now involved in this controversy other than place lands),

were withdrawn by virtue of section six of appellee's charter, and the executive withdrawal ordered and made on the approval of said map, and that said lands, by reason thereof, and the exceptive provisions in appellant's granting acts, heretofore referred to, were excepted and reserved from the operations of said grant, and that appellants are not entitled to said lands, or any part thereof. We maintain—

First. That said lands were duly selected.

Second. That the appellee had a reasonable time within which to make its selections after the filing of its map of definite route, the construction of its road, and the acceptance thereof by the President of the United States, and that before the expiration of said reasonable time said lands were patented to the State of Minnesota, and that the selection thereafter by appellee would be the doing of that which is not required by law, a useless thing.

THAT THE INDEMNITY LANDS WERE DULY SELECTED.

See Rec., 187, 188, 189, 192, 198, 199, 200, 201, 202, 296, 301, 554; exhibit 24, Rec., 331, exhibit 30, Rec., 334; original bill of complaint, Rec., 46, 61, 63, 64.

Order for decree *pro confesso* as to defendants, St. Paul and Pacific Railroad Company and Geo. P. Wilson, Attorney-General of the State of Minnesota.

Rec., 92.

See answer of other defendants, Rec., 86, 88.

See supplemental bill, Rec., 134, 135, and 137.

THE NORTHERN PACIFIC RAILROAD COMPANY, HAVING THE EARLIER GRANT, WAS ENTITLED TO A REASONABLE TIME WITHIN WHICH TO MAKE SELECTIONS.

It may be assumed in construing every grant, that Congress designed it to bear a reasonable construction,

and that by giving the grantee power to make selections within specified limits, some benefit was designed to be conferred. It is never possible for a grantee to make selections immediately upon the location of its line of road; in many cases, such selections are to be made through a country yet unsurveyed, and in all cases there must first be an examination of all that part of the grant situated within the primary limits, in order to ascertain the extent of the deficiencies. Such examinations involve a vast quantity of labor and consume much time, hence if a reasonable space of time within which to acquire the necessary data for making selections within indemnity limits is not accorded the grantee before selection becomes obligatory, then the right itself is a very vague and shadowy one, and has very little practical value. It would seem therefore to be dictated by reason that this condition must be inferred as forming a part of all grants, viz.: That the grantee has a reasonable time within which to make indemnity selections before adverse interests can lawfully attach. This exact question has been before but two Courts. First before Justice Brewer in this case, in the court below, and second before Judge Sawyer, on June 23, 1890, in the case of the Southern Pacific Railroad Company *v.* Wiggs and Newman. Circuit Judge Sawyer in that case, among other things, said:

"Upon the facts stated the question arises whether the lands, under the statute, were open to pre-emption by the respondent at the time he settled upon them for the purpose of acquiring a pre-emption right, and whether the patent, upon fulfilling the other conditions, was lawfully issued to him; or whether, on the contrary, the complainant, by the acceptance of the land grant, filing its map of definite location, and building the road in all respects in accordance with the requirements of the act

of Congress, did not, from the date of filing its map of location, acquire a right indefeasible by pre-emption claimants under the existing laws, *to select this land in lieu of lands within the twenty-mile limit* lost by reason of any of the cases enumerated in the statute. In Ryan *v.* C. P. R. R. Co., 5 Sawyer, 261, affirmed in 99 U. S., 382, it was held that in a similar grant, the grant attached and title vested in the specific alternate sections designated by odd numbers within the forty-mile limit of that grant, on the filing of the plat of the surveyed line of the road with the Secretary of the Interior; and the withdrawal of the land from sale by him; but that the title did not vest in any particular division of land that might be selected outside the limit to make up a deficiency until said deficiency had been ascertained, and the selection in lieu thereof had been actually made. This decision has been repeatedly recognized since.

It is insisted on the part of the respondent that these decisions must control the case, as the lands are in the belt of lands liable to be selected as lieu lands only, and were not selected to supply a deficiency till after the settlement for the purpose of pre-empting, at which time the title under the decision had not vested. But I am of the opinion that those decisions are not broad enough to reach this case. The ultimate question in those cases was quite different. In this case, the *right* to select in the *future* this land, in the part limited for that purpose, *vested*, should there turn out to be a deficiency on filing the map of definite location, thereby fixing the limit of the district for selection, although no title to the land vested till selection. The precise question now involved is not, so far as I am aware, presented in any other case. The statute itself makes a specific grant of every alternate section within certain specified limits, to which no other right has attached at that time when the line of the road becomes definitely fixed, and in case some of

the lands are lost by reason of prior interests having attached; it gives a right to select an amount equal to that so lost out of any odd sections of public lands from other prior claims within other specified limits of no great extent. The right to select at once vests, though the title to specific lands does not till the selection is made.

Copp's Land Owner, vol. 17, p. 105.

St. Paul & Chicago R. R. Co. *v.* Chas. T. Brown *et al.*, 24 Minn., 517–79.

What would amount to a reasonable time within which to make selections must be determined by the facts in each specific case, and in this case the section of the Northern Pacific passing through the lands in controversy, was not accepted by the President until January 6, 1873. The claim to the lands within the indemnity limits must have been made by the company shortly after that date.

The decision of the Secretary of the Interior, overruling the decision of the Commissioner of the General Land Office, was promulgated on May 13th of that year, hence there could have been no delay on the part of the Northern Pacific in making the selections which would have authorized the Secretary of the Interior, upon that ground, to take the action which he did. But the Secretary did not place his ruling upon the ground of laches upon the part of the Northern Pacific Company; no claim was made by the Secretary of the Interior or hinted at by that official in his decision of any lack of promptness by the Company in the assertion of its rights.

The facts relied upon by appellants as showing that they are entitled to the lands involved in this controversy, and that appellee is not, are fully set forth in the answer of the defendants in the court below, and the supplemental bill of the St. Paul, Minneapolis and Mani-

toba Railroad Company. There is no averment in either of said pleadings that said lands had not been duly selected by the appellee. The first suggestion concerning the defect in appellee's selections was made in the court below in the proceedings before the master; the objection there was not that no selections had been made, but that they had not been made in time.

See report, p. 187.

The St. Paul, Minneapolis and Manitoba Railroad Company had no interest in the property involved in this controversy at the date of filing said original bill.

Whatever interest it has it acquired *pendente lite* in 1879. It did not become a party to the proceedings in the Court below until 1884. The selections *by appellee* were all made prior to its hearing and decision.

In cases where selections are required, the nature of the selection must conform to the circumstances of the case. Appellee's granting act prescribes no mode of selection. It merely declares that it shall be made by the Company, under the direction of the Secretary of the Interior. It does not even require the selection to be approved by the Secretary.

It being proved and admitted that there would be a shortage of the Northern Pacific grant within the State of Minnesota, even if it should obtain all the lands of all the classes in controversy in these suits, this case is not one where specific selection by sections and subdivisions of sections on the part of the Northern Pacific Company was necessary to vest it with title to that portion of the lands lying within indemnity limits.

In the supplemental bill filed in the Court below, among other things, it is averred that the Northern Pacific Railroad Company "claims to be entitled to the priority of right in said indemnity lands, and is endeavoring to obtain patents to all lands on the odd-numbered

sections within the geographical place and indemnity limits of its said grant." It is nowhere suggested, either in said bill or in the answers filed in the Court below, or in the opinions of the Commissioner of the General Land Office and the Secretary of the Interior, that there was or is any defect whatever to the form in which the company made and presented its claim to the lands, so that if it be regarded as obligatory upon the company to make selections in such form as the Secretary of the Interior shall prescribe, it has satisfied that obligation. It must be conceded that the company presented to the Secretary a claim to these lands, which the Secretary received and considered upon its merits. The decision of the Secretary adversely to the company did not go to the form in which the claim was made, but to the right to make any claim whatever.

The question as to the sufficiency or the manner of making the selection is entirely between the Secretary and the Northern Pacific Railroad Company.

"The Secretary of the Interior, having put it beyond the power of the Northern Pacific Railroad Company to effectually make selections of the lands in controversy, and beyond his own power to effectually approve such selections if any had been made by certifying the lands to the State of Minnesota for the exclusive use of the St. Paul and Pacific Railroad Company, the exhibition of the original bill was a sufficient selection on the part of the Northern Pacific Railroad Company to satisfy the requirements of the grant."

The Secretary of the Interior decided that the grant of the St. Paul and Pacific Railroad Company of lands on the route between St. Cloud and St. Vincent was prior to that of the Northern Pacific Railroad Company, and for that reason, and no other, patented the lands to the State of Minnesota. This Court, passing upon a similar question, said:

"We think the action of the Secretary of the Interior and the Governor of Iowa, under this mistake of law and of their powers, and especially the Governor of Iowa, the common trustee of both these companies, cannot have the effect of destroying the rights of the parties. There was *in fact no selection*. All were wrongfully conveyed to the Sioux City Company."

Sioux City and St. Paul R. R. Co. *et al. v.* Chicago, Milwaukee and St. Paul R. R. Co., 117 U. S., 406–410.

Therefore, if the Northern Pacific Railroad Company had not made any selection of the lands involved in this controversy, the court below could not have made any other decision than that of awarding, as it did, the said lands to the said company.

The Secretary of the Interior made a mistake of law in overruling the decision of the Commissioner of the General Land Office, and in deciding that the act of March 3, 1871 was an amendment of the act of March 3, 1857 and to be construed as if enacted at that earlier date, and by reason of said mistake of law decided that the land involved in this controversy were granted at the date appellee filed its said map of general and definite route. Before and after that time, and during the pendency of this controversy, the registers and receivers of the local land offices in the State of Minnesota were instructed to reject and eliminate from all selection lists presented by appellee all lands granted to other railroads at the date of filing appellee's said map of definite route.

See Exhibit 30, Rec., 334.

It could not have been the design of Congress to impose upon the appellee an obligation to perform any mere empty and useless acts in order to entitle it to the quantity of land included in its grant, hence it never could have been intended on the part of that body to require the company to tender to the registers and receiv-

ers selection lists of lands which had been previously patented to a third party, and which the Secretary of the Interior had instructed said registers and receivers to reject if submitted. No good reason can be assigned for doing an act which would accomplish positively nothing, and especially in this case, where it is proven and admitted that there were not enough of said odd numbered sections to enable the company within the limits prescribed by its granting act, and the Joint Resolution of 1870, to acquire the quantity of lands granted it.

Since writing the foregoing portion of this brief and argument, we have been furnished with a copy of the brief and argument filed in this case by George B. Young, of counsel for appellants, parts of which require special attention.

We will now consider the fifth proposition, to wit:

Fifth. CAN THE MAP OF DEFINITE ROUTE BE FILED AND APPROVED IN SECTIONS?

Mr. Young, on page 17 of his brief and argument, says:

"The Northern Pacific Railroad Company can show no title to or right in any lands until it shows a definite location of its entire line, and a map thereof filed in the General Land Office.

"And it cannot recover the lands certified and patented to the State, and by the State conveyed to the St. Paul and Pacific Railroad Company, unless it shows (among other things) such definite location and filing of a map of its entire line from Lake Superior to Puget Sound, prior to the date (January 14, 1875,) of the patent to the State of Minnesota, and, indeed, prior to the definite location of the St. Vincent extension in 1871."

On page 37, the counsel further says:

"It (the Northern Pacific Company) has no rights at all until the definite location, or 'final location,' of its entire line and the filing of a plat of such location in the General Land Office."

If such is the construction of appellee's granting act, it has no right to any part of the grant, and can never acquire any, as will be hereinafter shown.

Such, however is not the construction which has been uniformly placed upon said granting act, for the 26 years last past, by the Commissioners of the General Land Office, the Secretaries of the Interior, the Presidents of the United States and the Courts.

The constant practice of the Interior Department has been to accept the maps of general and definite location in sections, and to adjust the grant and determine the controversies as to any tracts of land opposite thereto upon the theory that the rights of the company attached to those particular tracts upon the location of the route opposite thereto, whether the entire line had been located at that date or not. This has been the constant practice of the Department since the earliest railroad land grant, and has governed the construction of every grant of any considerable length. We will, however, upon this proposition, confine ourselves to the grant in question.

Upon the completion of the section of the road through the lands involved in this controversy, the President of the United States, upon the application of the Secretary of the Interior, appointed commissioners to examine said road. The commissioners made the examination and reported that the road had been constructed in compliance with the granting act, and thereupon the Acting Secretary of the Interior, Mr. Cowen, wrote the President of the United States as follows:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, D. C., *Jan.* 6, 1873.

"SIR: I have the honor to transmit herewith for your action the report of Messrs. Kauffman, Lands, and Underwood, commissioners appointed by your order to examine and report upon the Northern Pacific Railroad.

Under date of the 10th ult., these gentlemen reported

on the completed portion of said road, commencing at its junction with the Lake Superior and Mississippi Railroad, near Thompson, Minnesota, and extending to the Red River of the North, a distance of 228 miles. The commissioners in their report represent that this portion of road has been constructed in a first-class man-
652 ner. *I therefore recommend the acceptance of the same and the issue of patents for lands due on the completion thereof.*

"Very respectfully, your ob't servant,

"R. B. COWEN,

"*Acting Secretary.*

"To the PRESIDENT."

Upon the same day, the President of the United States duly endorsed upon said letter his approval thereof as follows:

"EXECUTIVE MANSION, *Jan.* 6, 1873.

"The within recommendations are approved.

"U. S. GRANT."

The same course has been pursued as to every section of appellee's main and branch line of railroad by the Interior Department and the President of the United States. This course of administrative, executive, and departmental construction has been uniformly followed since 1873. During all of said time, and each year thereof, Congress has been fully informed of the said course of procedure in relation thereto and the departmental construction of appellee's grant.

See Rep. of the Sec. of the Int., 1872–3, vol. 1, p. 304.

Ib., 1873–4, vol. 1, p. 286.

Ib., 1874–5, vol. 1, p. 295.

Ib., 1875–6, vol. 1, p. 408.

Ib., 1876–7, vol. 1, p. 192.

Ex. Doc. 2d Sess., 45th Cong., 1877–8, vol. 8 (Reps. of the Sec. of the Int.), p. 192.

Ex. Doc. 3d Sess., 45th Cong., 1878–9, vol. 9 (*Ib.*), p. 173.
Ex. Doc. 2d Sess., 46th Cong., 1879–80, vol. 9 (*Ib.*), p. 623.
Ex. Doc. 3d Sess., 46th Cong., 1880–1, vol. 9, (*Ib.*), p. 633.
Ex. Doc. 1st Sess., 47th Cong., 1881–2, vol. 9, (*Ib.*), p. 173.
Land Office Report for 1882, p. 100.
Ex. Doc. 2nd sess., 48th Cong., 1884–5, vol. 11, (*Ib.*), p. 58.

January 26, 1881 and March 26, 1882, the Secretary of the Interior furnished Congress, upon request, a full report of withdrawals then existing for the Northern Pacific Railroad Company, and the definite location of the route and the construction of said road in sections.

The Public Domain, 1883, p. 789, 806, 913–4.

February 28, 1884, the House of Representatives passed a resolution directing the Secretary of the Interior to inform the House when the line of the Northern Pacific and each and every part thereof was definitely and finally located, and the plat, *or plats*, of such definite and final location filed in the office of the Commissioner of the General Land Office, so far as said railroad has been definitely located.

The said resolution, correspondence in relation thereto and the report, are as follows:

Northern Pacific Railroad.

Letter from the Secretary of the Interior in response to a Resolution of the House calling for Information in regard to the Definite Location of various parts of the line of the Northern Pacific Railroad.

March 12, 1884.—Referred to the Committee on Pacific Railroads, and ordered to be printed.

Department of the Interior,
Washington, *March* 11, 1884.

Sir: In answer to House resolution of the 21st ultimo, directing me to furnish the House of Representatives with information concerning the date of the definite location of each of the several portions of the Northern Pacific Railroad, and of the filing of the plat thereof; and also concerning the claims of the company constructing said road to lands entered under the pre-emption or homestead laws, prior to the time of such definite location of said road, and the *status* of such claims in this Department, I have the honor to inclose herewith copy of the report of the Commissioner of the General Land Office on the subject.

Very respectfully,

H. M. Teller,
Secretary.

The Hon. Speaker of the
House of Representatives.

Department of the Interior,
General Land Office,
Washington, D. C., *February* 28, 1884.

Sir: I have the honor to acknowledge the receipt, by reference from you under date 25th inst., of the resolution of the House of Representatives, of 21st inst., herewith returned. Said resolution is as follows:

"That the Secretary of the Interior be, and he is hereby, directed to inform the House when the line of the Northern Pacific Railroad, and of each part thereof, was definitely and finally located, and the plat or plats of such definite and final location filed in the office of the Commissioner of the Genaral Land Office, so far as said

railroad has been definitely located, giving the date of the filing of each plat in said office, if more than one plat has been filed, and the length of line designated in each plat. And that he also inform the House whether the Northern Pacific Railroad Company has claimed or is claiming any lands on which homestead or pre-emption entries had been made within the limits of the grant to said company opposite to any part of the line of said railroad prior to the time of final definite location of such part of said line, and, if so, whether such claims of said company are being considered by his Department."

I am instructed to report the information called for.

The Northern Pacific Railroad has been definitely located from a point in the State of Wisconsin, about nine miles west of the Montreal River, to a point near Wallula, Wash., and from Portland, Ore., to Tacoma, Wash. The branch line has been definitely located from a point near the city of Yakima, Wash., to a junction with the main line near Ainsworth, in the same Territory.

A map showing the main line as constructed from a junction with the Lake Superior and Mississippi Railroad, in T. 48 N., R. 16 W., fourth principal meridian, in Minnesota, to the Red River of the North, a distance of 228.2 miles, was received in this office November 21, 1871, with Department letter of 20th, same month. This map was accepted and treated as the definite location of the road, no evidence of such location having been presented prior to that time.

Other maps of the main line of the road have been filed as follows:

Map showing the line from the Red River of the North to the Missouri River, in the Territory of Dakota, 196.4 miles, as located and adopted by the Board of Directors of the Company May 8, 1873, received May 26, 1873, with Department letter of same date.

Map showing the line from the Missouri River to the Little Missouri River, in Dakota, 150 miles, as located and approved by the executive committee of the board of directors of the company, July 17, 1880, received July 20, 1880, with Department letter of July 19th.

Map of the line from the Little Missouri River to the Yellowstone River, at the mouth of Glendive creek, in

Montana Territory, 66 miles, as located and approved by the board of directors of the company October 21, 1880, received here October 25, 1880, by reference from the Department under date 23d, same month.

Map of the line as located from the mouth of Glendive creek to the mouth of Tongue River, in Montana, 80 miles, approved by the board of directors of the company May 19, 1881, received June 25, 1881, by reference from the Department on June 24, 1881.

Map of the line as located from the mouth of Tongue River to the eastern boundary of the Crow Indian Reservation, in Montana, 55 miles, approved by the executive committee of the board of directors of the company June 21, 1881, received on the 25th, same month, by reference as above.

Map of the line from the eastern boundary of the Crow Indian Reservation, across the same and adjacent territory, to the western boundary of said reservation (then the Yellowstone River), in Montana, 200 miles, as located and approved by the executive committee of the board of directors of the company June 21, 1881, received June 27, 1881, by reference from the Department under date 25th, same month.

Map showing the line from the last crossing of the Yellowstone River (then the western boundary of the Crow Indian Reservation) to a point on the Little Blackfoot River, in Sec. 1, T. 9 N., R. 7 W., Montana, estimated at 151.5 miles, as located and approved by the board of directors of the company May 9, 1882, received July 6, 1882, by reference from the Department under date July 6, 1882.

Map of the line as located from the point on the Little Blackfoot River before mentioned to the south boundary of the Flathead Indian Reservation in Montana, estimated at 112.25 miles, and approved by the board of directors of the company May 9, 1882, received July 6, 1882, by reference as above.

Map showing the line from the southern boundary of said Flathead Indian Reservation across the southwestern part of the same to the western boundary thereof, 53.26 miles, as located and approved by the board of directors May 9, 1882, received June 8, 1883, by reference from the Department under date June 6, 1883.

Map of constructed line in Washington Territory, from Kalama northward 65 miles, received September 12, 1873, with Department letter of September 12, 1873, and map of constructed line from the terminus of the foregoing to Tacoma, 41.1 miles, received May 14, 1874, with Department letter dated same day. These maps were accepted and treated as the definite location.

Map showing the line from Kalama, Wash., to Portland, Oreg., 40.94 miles, as located and approved by the board of directors of the company May 14, 1882, received September 22, 1882, by reference from the Department, under date of September 21, 1882.

Map showing the line from a point near Wallula, Wash., northeasterly to a point near Spokane Falls, 152 miles, as located and approved by the board of directors September 28, 1880, received October 4, 1880, by reference from the Department under date 2d, same month.

Map of the line from Spokane Falls, Wash., to Lake Pend d'Oreille, Idaho, 66 miles, as located and approved by the executive committee of the board of directors of the company August 24, 1881, received August 30, 1881, by reference from the Department under date 29th, same month.

Map of the line from a point on Lake Pend d'Oreille, Idaho, to a point on the north bank of Clark's Fork of the Columbia River, opposite the mouth of the Missoula River, in Montana Territory, 122 miles, as located and approved by the Board of Directors of the Company, November 16, 1882, received December 12, 1882, by reference from the Department, under date December 11, 1882. This line connected with the definite location through the Flathead Indian Reservation from the east, and completed the location of the main line between the Lake Superior and Mississippi Railroad Junction in Minnesota and Wallula Junction, in Washington Territory.

Map of the line from a point in Sec. 1, T. 48 N., R. 17 W., fourth principal meridian, Minnesota, eastward to a point in Sec. 15, T. 47 N., R. 2 W., fourth principal meridian, Wisconsin, 100 miles, as located, approved by the board of directors of the company May 9, 1882, received July 6, 1882, by reference from the Department under date 5th, same month.

The eastern terminus of the line shown on this map is about nine miles west of the mouth of Montreal River, the initial point of the general route of the main line. The total length of located main line herein given is 1,888.65 miles.

A map of the branch line in Washington Territory is definitely located from a point near Yakima to a junction with the main line near Ainsworth, 85.86 miles, approved by the Board of Directors of the Company June 21, 1883, was received June 29, 1883, by reference from the Department under date 27th, same month. This map was submitted with my report of December 5th last, upon the application of the President of the Company for the appointment of commissioners to examine a portion of the line constructed, and was accepted and returned by you with letter of 4th ultimo, received on the 7th ultimo.

So far as this office is advised, no part of the main line or branch lines of said railroad other than as herein set forth has been definitely located.

The Railroad Company is claiming land in odd-numbered sections, within the limits of its grant, upon which pre-emption and homestead settlements or entries have been made prior to the date of the definite location of its road, and subsequent to the date of the withdrawals upon general route, which it is held by the Department and this office were authorized by section 6 of the act of July 2, 1864, and such claims are being considered. The rule is that where a valid claim or settlement is shown to have been subsisting at the date of withdrawal upon general route, the land covered thereby is held to have been excepted from said withdrawal and from the grant.

In the absence of such a claim or settlement at that date, the right of the Company has been recognized as superior, but, in view of proposed legislation touching said grant, action on claims initiated and entries made subsequently has been suspended.

Very respectfully,

N. C. McFARLAND,
Commissioner.

Hon. H. M. TELLER,
Secretary of the Interior.

Ex. Doc. 48th Cong., 1st Sess., No. 114.

The Interior Department has disposed of hundreds of cases upon the theory that, upon the filing and approval of a map of definite route of any part of the line, the grant attached to the lands within the limits of the act along such part of the line.

Mr. Justice Lamar, as Secretary, in the case of the Northern Pacific Railroad Company *v.* Vaughn, said:

"Under the ruling in the case of Buttz *v.* the Northern Pacific Railroad Company (119 U. S., 55), it was decided that when the general route of the road provided for in section 6 of the act of July 2, 1864, was fixed, and information thereof was given to the Land Department by the filing of a map thereof with the Secretary of the Interior, the statute withdrew from sale or pre-emption the odd-numbered sections to the extent of 40 miles on each side thereof.

"The tract is within the limits of the withdrawal ordered April 21, 1872, upon the map of general route filed February 24, 1872, and within the 40-mile limit of the line of the road as shown upon a map of definite location filed July 6, 1882. It is not alleged that any claim to the tract adverse to that of the company existed at the time of withdrawal of general route.

"The case thereof comes clearly within the rule in the Buttz case, and your decision is accordingly reversed."

6 Decisions Relating to Public Lands, 11.

The maps of general and definite route referred to in said case, as heretofore shown, covered a part of appellee's line only.

Mr. Secretary Teller, in construing the grant to the California and Oregon Railroad Company, which is like the grant of appellee in so far as the point now under consideration is concerned, said:

"The road opposite the lands in question was definitely located September 13, 1867, and the granted lands were ordered to be withdrawn November 25th of the same year. * * * In the case under consideration, there seems to be no course left except to issue patents for the granted

lands as earned by the construction and acceptance of a portion of the road in the manner specified in the act, although the entire line has not been completed within the time named in the act."

2 Decisions Relating to Public Lands, 489.
Central Pacific R. R. Co., *Ib.*, 477–8.
Prest *v.* Northern Pacific R. R. Co., *Ib.*, 506–8.
Monagle *v.* Northern Pacific R. R. Co., *Ib.*, 529.
Northern Pacific R. R. Co., *v.* Pressy, *Ib.*, 551.
Northern Pacific R. R. Co., 5 *Ib.*, 193.
Central Pacific R. R. Co., *Ib.*, 66.

This Court, in the case of Buttz *v.* the Northern Pacific Railroad Company, has passed upon this question. The maps designating the line were referred to in the statement of the case as follows:

"On the 21st of February, 1872, the company filed in the Office of the Interior a map showing that *part* of the general route of the road beginning at the westerly boundary of the Red River of the North, and extending westerly to James River in Dakota. * * * On May 26, 1873, the company filed in the office of the Commissioner of the General Land Office a map *showing the definite location of that part of its line of road* extending from the Red River of the North to Missouri River in Dakota. All that portion of this definite location from the Red River of the North to the west line of the sections named was the same as in the map of 1871. On the 11th of June, 1873, the acting Commissioner of the General Land Office addressed a letter to the local registers and receivers informing them of the filing of this map of definite location, and transmitting to them a diagram showing the limits of the land grant along said line, also the limits of the withdrawal ordered on March 30, 1872."

This Court in passing upon said maps of part of the line said:

"The definite location of the line of the road was subsequently made by the company, and a map of it filed

with the Secretary of the Interior. The right of the company, freed from any incumbrances of Indian title, immediately attached to the alternate sections, a portion of one of which constitutes the premises in controversy. * * * The act of Congress not only contemplates the filing by the company in the office of the Commissioner of the General Land Office of a map showing the definite location of the line of its road, and the limits of the grant to such alternate odd sections as have not at that time been reserved, sold, granted, or otherwise disposed of, and are free from pre-emption, grant, or other claims or rights, but it also contemplates a preliminary designation of the general route of the road, and the exclusion from sale, entry or pre-emption of the adjoining odd sections within forty miles on each side until the definite location is made. * * * When the general route of the road is thus fixed in good faith, and information thereof given to the Land Department by filing a map thereof with the Commissioner of the General Land Office or the Secretary of the Interior, the law withdraws from sale or pre-emption the odd sections to the extent of forty miles on each side. The object of the law in this particular is plain; it is to preserve the land for the company to which, in aid of the construction of its road, it is granted. Although the law does not require the officers of the Land Department to give notice to the local land officers of the withdrawal of odd sections from sale or pre-emption, it has been the practice of the Department in such cases to formally withdraw them."

Buttz *v.* Northern Pacific R. R. Co., 119 U. S., 55.

U. S. *v.* McLaughlin, 127 U. S., 428.

Missouri, Kansas, and Texas R. R. Co. *v.* Kansas and Pacific R. R. Co., 97 U. S., 491.

U. S. *v.* McLaughlin, 30 Fed. Rep., 147–62.

Atchison, Topeka, and Santa Fé R. R. Co. *v.* Mecklin, 23 Kan., 167.

Chicago, St. Paul, Minneapolis, and Omaha R. R. Co., 6 Decisions Relating to Public Lands, 195–204.

Congress, with knowledge that appellee's map of definite route had been filed and approved in sections, and

of the decisions of this Court in relation thereto, on the 3d of March, 1887, passed an act directing the Secretary of the Interior to proceed immediately with the adjustment of all railroad land grants.

The first section of said act is as follows:

"*Be it enacted*, That the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the said railroad grants made by Congress to aid in the construction of railroads, and heretofore unadjusted."

24 Stat., 556.

The forfeiture bill passed by Congress during its recent session, and approved on September 29, 1890, forfeited appellee's grant fron Wallula, in the State of Washington, to Portland, in the State of Oregon, a distance of about 214 miles. The map of definite route between said points has not been, and probably never will be filed.

The fifth section of said act recognizes the line made by executive order in adjusting appellee's grant and withdrawing the lands included therein, known as "The Harrison Line" at Wallula, and protects the purchasers from the Northern Pacific of all lands located north of said line and within the limits of the grant, as designated by the said "Harrison Line," and we submit that the construction placed upon appellee's grant by the Secretaries of the Interior and Presidents of the United States for more than twenty years last past, and this and other courts in several cases, and the recognition thereof by Congress in connection with the fourth section of the granting act which expressly provides for constructing the road in sections settles the question that the title to the place lands involved in this controversy vested in the appellee upon the filing and approval, November 21, 1871, of the said map of definite route through said lands.

Sixth—Estoppel.

Mr. Young, from page 112 to 135 of his brief, argues that :

"Even conceding that the title of the Northern Pacific Company under its grant should be found, as a mere matter of law, superior to that of the St. Paul and Pacific Company, still the former company ought not to be permitted to assert such superior title as against, first, the latter company; second, or its mortgage bondholders; third, or the Manitoba Company."

The St. Paul and Pacific Railroad Company permitted the bill in the court below to be taken against it *pro confesso*, thereby admitting that it was not entitled to the lands involved in this controversy, and that the Northern Pacific Company was and is.

1st. The said St. Paul and Pacific Company, so far as this case is concerned, has no mortgage bondholders. The mortgage mentioned in the pleadings and proofs has been foreclosed, the property sold, and the said bondholders have no further interest in these proceedings and need not be further mentioned or considered.

2d. In 1877, a syndicate was formed, of which J. J. Hill, the president of the Manitoba Company, was one for the purpose of purchasing the bonds of the St. Paul and Pacific Company, organizing the Manitoba Company and purchasing the property of the St. Paul and Pacific Company, and thereby purchasing a right to become a party to these proceedings. They purchased the bonds at thirteen and three-fourths cents and less on a dollar, and organized the said Manitoba Company. The said syndicate at the time of purchasing said bonds, and organizing said Manitoba Company, and the said company at the time of purchasing said property and the right to become a party to this suit, had full and perfect knowledge of the claim of the Northern Pacific Company to the lands involved in this controversy, the filing of

its said maps of general and definite route and the approval thereof, and the patenting of a part of said lands to the appellee, and it is very clear that the said company did not rely upon and were not misled by any representations of the St. Paul and Pacific Company, the Northern Pacific or any other company.

3d. In considering this proposition it must always be remembered that the rights of the Manitoba Company had their origin subsequently to the passage of the act of Congress of March 3, 1871, and that said company founds its claim entirely upon the mortgage executed by the St. Paul and Pacific Company under the foreclosure of which the Manitoba Company purchased the property and the right to become a party to this suit.

The mortgage bears date April 1, 1871, although, as a matter of fact, it was not acknowledged and delivered until considerably later.

In the recitals of said mortgage, among other things, the said act of 1871 is set forth, and what is mortgaged are the rights, property, and franchises of the Company conferred by that act; hence whatever might have occurred between the St. Paul and Pacific Company and the Northern Pacific Company before the passage of said act, and whatever might have been the motives of the Northern Pacific Company in procuring its passage, are not of the slightest consequence here. As a matter of fact, the service performed by the Northern Pacific Company in securing the surrendering of the old grant and the acquisition of the new was of incalculable benefit to the St. Paul and Pacific Railroad Company. The appellant's testimony shows the poverty of the country through which the route of the St. Vincent branch was originally authorized to be located, and the Northern Pacific Company has produced evidence, including the evidence of the President of the St. Paul, Minneapolis and Manitoba Railroad Company, which conclusively shows the rich-

ness and productiveness of the country through which the existing line runs.

It is asserted, by way of estoppel against the Northern Pacific Company, that certain representations have been made, which the original bondholders, who sold out so cheaply to the syndicate now before the Court, relied upon in ma king their original purchase of the same bonds This defense can most properly be considered under the following heads:

First. Were any representations made by anybody?

Second. Where they made by the Northern Pacific Railroad Company?

First. If both of these questions must be answered in the affirmative, what would be the legal effect?

First. The assertions themselves consist of certain recitals made in the bonds and in the mortgage. These instruments manifestly must be taken together, and the recitals in the bonds are referable to those contained in the mortgage. The recital in the bond relied upon is as follows:

"And which conveys also to said trustees all the right, title and interest which the Company last aforesaid now has or may hereafter acquire, by the construction of said road or any part thereof, or otherwise, in, to, or concerning certain lands situated in the said State which were heretofore granted by the Congress of the United States to aid in the construction of such railroads, by acts of the said Congress approved respectively, March 3, 1857, March 3, 1865, and March 3, 1871, the extent and aggregate area of such lands to which said Company will become entitled by the construction of said railroads under existing legislation being *estimated* at two million two hundred seventeen thousand and two hundred (2,217,200) acres, *more or less.*

The granting part of the mortgage alluded to the lands in the following terms:

"And also all right, title and interest which said party of the first part now has, and all right, title and interest which the said party of the first part, its successors or assigns, shall or may at any time hereafter acquire by reason of the construction of said railroads, or of either or of any part of either thereof, or otherwise in, to, or concerning the lands situate, lying, and being in the State of Minnesota, which are embraced or intended to be embraced in the grants aforesaid, or either of them, made by the Congress of the United States to the former Territory and the present State of Minnesota by the acts of said Congress hereinbefore mentioned or either of them, and which have been granted by said State to the party of the first part, or shall or may be granted or conveyed to the said party of the first part, its successors or assigns, to aid in the construction of the said lines of railroad, or of either or of any part of either thereof."

Taking these allusions and recitals in the bonds in connection with the recitals in the mortgage, it is perfectly apparent that they amount to no representation of anything whatever that any person would have a right to rely upon.

It is undoubtedly true that Congress made a grant for the benefit of this company of the quantity of lands mentioned. When the mortgage was made and the bonds were put out, the line of road had not yet been located, consequently the deficiency of lands could not be accurately computed. It was known that the greater part of the line would run through a region comparatively intact.

The indemity limits to which resort might be had along any part of the line to make up losses along any other part of the line, embraced an area equal to that of the lands within the primary limits. Hence, it was undoubtedly expected by every one concerned, and it was capable of natural and honest expectation, that the company would derive under the grant the full quantity of ten sections for each mile of the road built, takin

line throughout its entire length. Neither the bonds nor the mortgage attempted to say along which part of the line these lands could be found, nor to say whether even any of the lands within the primary limits could be secured. They did not undertake to assert even an opinion that no prior grants existed intersecting this one, and consequently taking from it a portion of the lands which otherwise would accrue under it. Upon the contrary, the company's map of general route through the lands involved in this controversy was filed and approved prior to the execution of said mortgage and the purchase of said bonds. The legislative withdrawal had attached, the executive withdrawal had been made, and the company had acquired an inchoate and inceptive right and title to said lands. The records showing these facts were public records of the United States, of which the purchasers of said bonds at the time of making their purchase, and at all times thereafter, had *constructive knowledge.*

Southern Pacific Railroad Company *v.* Dull *et al.* 10 United States Court Records, 9th circuit (Sawyer), pp. 506–520 and 221.

Monroe County Commissioners *v.* May, 67 Ind. 562.

Northern Pacific Railroad Company *v.* Lilly, 9 Pac. Rep., 116.

Denny *v.* Dobson, 32 Fed. Rep., pp. 899, 906, 907, 909.

United States *v.* Northern Pacific Railroad Company, 41 Fed. Rep., 847.

Butts *v.* Northern Pacific Railroad Company, 119 U. S. R., pp. 55, 71, 72 and 73.

The bonds were therefore purchased and held with knowledge that the Northern Pacific Railroad Company claimed the lands involved in this controversy prior to

the time of the purchase of said bonds by the syndicate, and the organization of the St. Paul, Minneapolis and Manitoba Railroad Company and the purchase by it of the properties of the St. Paul and Pacific Railroad Company. A portion of the lands had been patented to the Northern Pacific Railroad Company, and this suit had been commenced to recover the remainder, and the bill had been taken *pro confesso* as to the real parties in interest.

Second. Whatever assertions or representations were made through and by said mortgage and bonds, were made by the company executing them, viz.: the St. Paul and Pacific Railroad Company.

The Northern Pacific Railroad Company is not alluded to either in the bonds or mortgage as having the slightest connection with the affairs of the St. Paul and Pacific Company, and nobody could have bought a bond upon the supposition that he was taking the word of the Northern Pacific Company for anything whatever.

Third. The recitals relied upon do not mention the lands here in controversy, nor any particular lands. If any representation was made, it was merely one to the effect that somewhere in the length and breadth of the grant, and in the indemnity as well as the primary limits, lands enough would be found to make up the full grant of ten sections per mile.

But, if the act of Congress of July 2, 1864, and the construction of the Northern Racific Railroad, have vested the title to the lands here in dispute in the Northern Pacific Railroad Company, nothing short of an actual conveyance of those specific lands, or something which in equity would be tantamount to it, namely, the representation in so many words that the title of those very lands was in the other Company, would be of any relevancy so far as the title to those specific lands would be concerned. If the "*estimate*" of the quantity can be

regarded as a representation, and that should be found to be false, the remedy would not be the loss of title to specific tracts not referred to in the representations, but necessarily pecuniary damages. Hence, under any view, the pretended misrepresentations can have no bearing upon the question of title to the specific tracts embraced in this litigation.

The other incidents mentioned in connection with the subject of estoppel are not entitled to extended consideration. It is said by General Becker that on certain occasions individual members of the Board of Northern Pacific Directors expressed the opinion that priority in the conflicting land limits of the two companies would be accorded by the Northern Pacific to the St. Paul and Pacific Company. Even admitting such conversations to have occurred, they are not of the slightest moment here. In the first place, they were mere expressions of opinion, not even communicated to the bondholders, as to what the future action of the proper authorities of the Northern Pacific would be. They are nothing more than mere statements of individual opinions on a question of law. The only authorities capable of speaking for the Northern Pacific Company upon such points were directors sitting as a board, and the body of shareholders assembled in stockholders' meeting. Any statement, or even promise, as to the action of the company on the part of individual directors or stockholders, could have no binding force or effect whatever upon the company. Furthermore, any expression of opinion by the board or stockholders assembled in meeting concerning the question of title in this case, would only have been like any other statement of opinion upon a legal proposition. It would not have been binding for a moment upon those making the assertion.

Whether or not the lands here in dispute belong to the Northern Pacific Company, or to the St. Paul and Pacific Company, or its successors, has always been a

pure matter of law to be determined by an examination of the acts of Congress and of the administrative department of the Government, all of which are matters of record, and all of which have been equally open to inspection at all times by all persons interested. Every bondholder has been informed by the bond and mortgage, under which he was secured of the precise nature and origin of the St. Paul and Pacific grant.

The nature and origin of the Northern Pacific grant is in the statutes of Congress, and its maps and withdrawals are public records in the Department of the Interior, with all of which the whole world is conclusively presumed to be acquainted.

The St. Paul, Minneapolis and Manitoba Railroad Company, the only one of the appellants having any interest in these proceedings, acquired such interest after the commencement of this suit in the court below, and after service of process upon the St. Paul and Pacific Company, and the Attorney-General of the State of Minnesota, and after the default of the said St. Paul and Pacific Company and the said Attorney-General had been duly noted, and after the patent to the lands involved in the supplemental bill had been issued and delivered to the Northern Pacific Company, and after the filing and approval of the Northern Pacific Company's maps of general and definite route, and with knowledge that whatever rights it acquired through said purchase from the St. Paul and Pacific Company accrued under and by virtue of the act of March 3, 1871, and were subsequent and subject to the prior right and claim of the Northern Pacific Company.

Therefore, the following propositions must dispose of this question in favor of appellee:

First. The only representations relied upon are those set forth in the bonds and mortgage, and they are representations (if representations at all) of the St. Paul and Pacific, and not of the Northern Pacific Company.

Second. If there were any representations, it is not shown that the original bondholders, the syndicate, or the Manitoba Company relied upon them, or were misled thereby.

Jewett *v.* Miller, 6 Seld. (N. Y.), 402.
Larkins' Appeal, 38 Pa. St., 457.
Eitel *v.* Bracken, 38 N. Y. Sup. Ct., 7.

The above cases are cited in the notes to the Duchess of Kingston Case, Vol. 2, part 2, Smith's Leading Cases, page 861 (8th edition).

Cook's Stocks and Stockholders and Corporation Law, 2d Ed., Secs. 157 and 165.

Third. The language in the bonds relied upon as showing that somewhere within the place and indemnity limits of the grants made by the acts mentioned in the bonds, the company would acquire the quantity of its grant, "*estimated* at two million, two hundred and seventeen thousand two hundred (2,217,200) acres, *more* or *less*," does not constitute a representation for two reasons:

First. It is merely an expression of an opinion that when the line (not then located) should be established there would be within the limits of the place and indemnity limits vacant public lands in odd sections amounting to ten sections per mile.

Van Weel *v.* Winston *et al.*, 115 U. S., 228.

Second. It does not clearly and definitely describe or identify the land involved in this controversy.

Bigelow on Estoppel, 4th Ed., 559 and note 6.

Third. The question as to priority of grant is one of law, and an expression of an opinion upon a question of law is not a representation.

Cook on Stocks, Stockholders and Corporation Law, 2d Ed., Sec. 146.

In addition to the authorities cited as referring to the question of estoppel we beg leave to refer to:

Commonwealth *v.* Moltz, 10 Pa. St., 627–631.
Crest *v.* Jack., 3 Watts, 238.
Tarra *v.* Adams, 12 Bush. 515.
Whitewell *v.* Mold, 22 Minn., 15.
Bals *v.* Perry, 51 Mo., 449.
Brant *v.* Va. Coal Co., 93 U. S., 326.

These cases are cited in the notes to the Duchess of Kingston Case, Vol. 2, part 2, Smith's Leading Cases, page 861 (8th edition), *supra*.

Attention is called particularly to the case cited above in 93 U. S. as meeting the questions involved here fully.

See also—

Steel *v.* Smith & Co., 106 U. S., 495.
Farmers' Loan, etc. *v.* Galesburg, 133 *Ib.*, 156.
Upton *v.* Tribilock, 91 U. S., 45.
7 Rob. Pr., 447–449 (notes 130–1–2, and 140–1.)

But the language of this Court in *Davenport* v. *Lamb*, 13 Wall., 431, is full and specific to every intent, and fits this case exactly upon the question of estoppel, viz.: "The declarations" (upon which the estoppel was claimed) "are at best but the expression of his opinion in relation to a subject upon which Davenport was equally well informed, or possessed equally with him, the means of information," and the declarations were held inadmissible.

In this connection Mr. Young mentions a few other matters to which we desire to call attention. On page 112 of his brief he says:

"The Northern Pacific Company has elected to treat the location of 1869, and the line from a point between St. Cloud and Lake Superior as abandoned on November 21, 1871, when it filed its map of definite location, and has received patents for, or is claiming under its Congressional land grant all lands within the odd-numbered sections within twenty miles on each side of its railroad as located."

And he concludes that—

"The Northern Pacific Company is estopped to allege than on November 18, 1871, when the map of definite location of the St. Paul and Pacific line was filed, the act of March 3, 1871 was not in accord with existing legislation, or that proper releases had not been filed."

The location of 1869 referred to is the map of definite route extending from Crow Wing westwardly about 60 miles to Otter Tail and Rush Lakes, and thence northerly to the center of township 142 which the Secretary of the Interior rejected as heretofore shown.

Said line between St. Cloud and Lake Superior was never located, and all the rights which the State of Minnesota had power to forfeit as to said St. Paul and Pacific Company were forfeited by the act of the legislature of said State approved March 9, 1870.

See Rec., 356.

It was not necessary, therefore, for the Northern Pacific Company to make any election concerning either or both of said lines, and it is quite certain that it made none; it had nothing to do with them. In filing its maps it was complying with a statutory right and it did not thereby make any representations. On page 127 Mr. Young, in his brief, divides appellee's lands into two classes, place and indemnity lands. As to place lands he said:

"It may be said that the title depends not on the matters *in pais*, but on the construction of the granting acts of Congress; that it is in a sense a matter of law, and not of fact; but as to the lands in the second class, their exception from the St. Paul and Pacific Company's grant and from its mortgage does not depend solely upon the construction of the acts of Congress. * * * The withdrawal was a pure matter of fact."

The withdrawals, legislative and executive, were matters of public record, existing March 3, 1871, at the date

of the execution of said bonds and mortgage, and the sale of said bonds, and the question as to whether said withdrawals, and the exceptive provisions of the granting act of the St. Paul and Pacific Company reserved and excepted the lands involved in this controversy from the grant to said Company, was then, and is now, purely a question of law.

On page 129 of his brief, Mr. Young says:

"If the grant had fallen short by reason of pre-emption or homestead entries before definite location, it is not pretended that the Northern Pacific Company would be bound to make such losses good."

He concedes, that which cannot well be denied, that if every odd section within the limits of the grant to the St. Paul and Pacific Company was, at the time of filing its map of definite route, had been covered by pre-emption, homestead, or other claims, swamp, or other grants than that to the Northern Pacific Company, and every acre thereof excepted and reserved from the operation of the grant to the said St. Paul and Pacific Company, that the Northern Pacific Company, by reason of the pretended representations, would not be required to make up the said two million, two hundred and seventeen thousand, two hundred (2,217,200) acres of land, or any part thereof.

It must be conceded that if the withdrawal of October 12, 1870, for the benefit of the Northern Pacific Company, had not been made between that date and the approval of the map of the St. Paul & Pacific Company, December 19, 1871, many homestead and pre-emption claims would have been initiated upon the lands involved in this controversy, and it is conceded that such claims would have excepted the lands from the operation of appellant's granting act. If it further conceded that if said lands had been excepted from the operation of

said act, by reason of said homestead and pre-emption claims, the Northern Pacific Company would not have been required by reason of said pretended representations, to make good said losses, but it is contended that, by reason of the Northern Pacific Company's filing its map of general route, and causing the same to be approved, and the lands involved in this controversy to be withdrawn, and thereby preventing the initiation of said homestead and pre-emption claims, that the lands which the Northern Pacific Company had reserved for itself, and which the Manitoba Company concedes it would have lost if taken by homestead or pre-emption claimants between October 12, 1870, and December 19, 1871, enure to the benefit of said Manitoba Company.

This shows the poverty of appellant's contention, and establishes conclusively that the "estimate" of the quantity of lands mentioned in the bonds was not a representation, and, even if it was, the Northern Pacific Company, not being privy or party thereto, was and is not required to make up the losses.

On page 131 of his brief, Mr. Young further says:

"They (meaning the purchasers of the bonds) were not bound to exact from the Northern Pacific Company assurances against a claim of which they had no notice."

The counsel in the above sentence disregards a well-settled proposition of law: That all persons interested or acquiring an interest in lands within the limits of any Congressional land grant have constructive notice of the records of the Interior Department concerning said grant and the withdrawals of land made thereunder.

Mr. Young, on page 117 of his brief, says:

"About $1,500,000 of the proceeds from the sale of said bonds were used by the St. Paul and Pacific Company in completing the main line of the First Division Company, and about $1,000,000 for the payment of interest coupons on the main and branch lines."

For this reason, he argues that the Northern Pacific Company ought not to assert its claim to the lands involved in this controversy. He assumes, that, by reason of the Northern Pacific Company's owning a majority of the stock of the St. Paul and Pacific Company, the corporate existence, individuality, and liability of the latter Company merged in that of the former Company, and that the former Company, notwithstanding it was not a party to the bonds or mortgage, and there was no privity between it and the bondholders as to the use of the money which they had loaned to the St. Paul and Pacific Company, and the want of consent or knowledge of its mortgage trustees and bondholders, is estopped, by reason of the St. Paul and Pacific Company's mistake in a matter of an opinion, or estimate, as to the quantity of land mentioned in its bonds and mortgage.

This is carrying the doctrine of estoppel far beyond any adjudged, reasonable, or known bounds.

Van Weel *v.* Winston *et al.*, 115 U. S., 228, 242, 245.

Mr. Young also argues that the Northern Pacific Company ought not to claim the lands involved in this controversy, for the reason, that, by surrendering the old grant and taking the new, it acquires the lands within the limits of the old grant.

It must be remembered that part of the old grant, from St. Anthony to Crow Wing, was located in 1857, and the road constructed prior to the grant to the Northern Pacific Company, and that a large quantity of the lands within the limits of the Northern Pacific Company's grant have been patented under the act of 1857.

It must also be remembered that the testimony in this case shows quite conclusively that the lands north of Crow Wing were of but little value, and that the lands involved in this controversy are of great value.

But in this Court the proposition is settled that priority of grant, and not priority of location and construction governs.

This Court, in passing upon this case, has nothing whatever to do with lands located one hundred miles east of Glyndon. The only question to be passed upon is *the condition of the lands involved in this controversy at the date of filing and approval of appellee's maps of general and definite route.*

The counsel, in this connection, also assumes that the grants under the acts of 1857 and 1865 were floats and might have been located so as to include the very lands involved in this controversy. He assigns no reason for this position.

Notwithstanding that said grants were floats, in a certain sense, it must be conceded that they were anchored at St. Anthony, St. Cloud, Crow Wing and St. Vincent. St. Anthony, St. Cloud and Crow Wing are expressly named in said acts as points through which the road, when constructed, must pass, and which must therefore be within the boundaries of said grants.

The original act vested in the Legislature the power of fixing the northern terminus, and it was accordingly located at St. Vincent by said Legislature, and such location was afterwards recognized by Congress in the joint resolution of 1862 and the act of 1865.

The chains to said anchors will not permit the grant to float 100 miles due west from Crow Wing, so as to include all or any part of the land involved in this controversy.

Appellant's counsel also says that—

"Congress by naming the intersection of the tenth standard parallel with the fourth guide meridian, did not intend to fix it as a point on the branch line."

Such resolution expressly makes the intersection a

point on said branch line. It vacates and restores to the public domain the grant north of said point, and leaves that point as the northern terminus of said branch line.

The St. Paul and Pacific Company and the State of Minnesota accepted the provisions of the joint resolution, and, even if it be conceded that there is doubt as to the intention plainly expressed by Congress, it must be held that there was no doubt as to the exact location of the northern terminus of said branch line, after the said acceptances and approval of said joint resolution. The said grant, after such acceptances, was anchored at St. Cloud, St. Anthony, Crow Wing, said intersection, and St. Vincent.

But the counsel argues that, even if the said grant was anchored by the said resolution and acceptances thereof at said intersection, the anchor was lifted by the ninth section of the act of March 3, 1865. He argues that the words found in said section, to wit, "As though the said Joint Resolution had not passed," change the point of location and not the grant.

Our contention is, that those words, in connection with the other sections of said act, have relation to, and are intended to make, an affirmative grant of that date, of ten sections per mile for the line between said intersection and St. Vincent.

In this connection, cousel refers us to the case of Nash *v.* Sullivan, 29 Minn., 206. The Court in that case said:

"We think the manifest intent of this act of March 3, 1865, was to restore to the St. Vincent Branch the grant of six sections per mile which had been surrendered by the acceptance of the Joint Resolution of July 12, 1862 and to increase it to ten sections per mile, and therefore, *that the act amounts to an affirmative grant of the latter amount.*"

Said grant, therefore, is subsequent to that of the Northern Pacific Company.

Counsel, referring to this same act of March 3, 1871, says:

(*c*, page 78). "*Only the portion from St. Cloud to a point of intersection with the line of the original grant is altered. Only as to this can it be said that the line is a substitute for anything.* * * * *Congress intended the grant for so much of the line as was altered (and only for such part is any grant made) to depend upon a surrender or release of the lands along that part abandoned by the alteration.*"

It will thus be seen that appellants concede that the grant from St. Cloud to the intersection with the line of the original grant was made by the said act of March 3, 1871. At that date the lands involved in this controversy were reserved and withdrawn, and necessarily, therefore, excepted from the operation of said act.

It thus clearly appears that appellant's grants south and north of said intersection are subsequent to appellee's grant.

The counsel also says:

(*d*) page 79. "Suppose the Company had not accepted the power given it (by the act of 1871) to make the alterations, it would have had a right to build from a point between St. Cloud and Crow Wing to Lake Superior, and it would have had a right to build from Crow Wing *via Otter Tail and Rush Lakes to St. Vincent.*"

He also says:

"The Secretary, under the mistaken opinion that the line should touch the intersection of the tenth standard parallel with the fourth guide meridian, declined to accept the map until satisfactory proof should be furnished that such route was impracticable."

The Secretary decided (and his decision upon a question of fact is conclusive here) that the evidence submitted did not warrant the deflection or location by way of Otter Tail and Rush Lakes. The only additional evidence offered in this case, and not considered by the Secretary, is that of Mr. Rice, President of the St. Paul and

Pacific Company. He had never been over the route, and had no personal knowledge of the feasibility of a direct line. His hearsay testimony was not considered in the trial of the case in the court below as warranting the deflection.

The counsel, referring to the act of March 3, 1873, says:

(*e*) page 80. "Congress recognized and thus made valid the *definite* location beyond Otter Tail and Rush Lakes, and the lands in place at once became *granted* lands by the acts of 1857 and 1865, and it became the Secretary's duty to reserve also the lands within the 20-mile limits, if the Company did not elect to alter its branch lines."

The definite location referred to is the map filed in 1869, which, after due consideration of all the testimony bearing thereon by the Secretary, was rejected. Said map extended only from Crow Wing westwardly between Otter Tail and Rush Lakes, and thence north to the centre of Township 142. Counsel's argument is based upon the following language of said act, to wit:

"*Instead of constructing a road from Crow Wing to St. Vincent, it may locate and construct in lieu thereof a line * * * from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lakes so as to form a more direct route to St. Vincent, with the same proportional grants of lands to be taken in the same manner that is provided for the present lines by existing laws.*"

The definite location applies to that part of the rejected line and map of 1869 located north of said lakes.

The intersection then, according to counsel's argument, has reference only to a short piece of line located north of township 135, and south of township 143, or a piece of line, not exceeding forty miles in length. Said piece of line as shown on said map of 1869, is located

from twenty-five to thirty miles east of the final and definite location of the road from St. Cloud to St. Vincent.

The counsel further says that the *lands in place at "once became lands granted by the acts of 1857 and 1865,"* lands to which the grant had already attached, by reason of definite location." (Mr. Young's brief, page 80.) If counsel's construction of the meaning of the words "intersection with the line of the original grant," used in said act of 1871, is correct, then his conclusion that the *lands in place "at once became granted lands," must be conceded.*

But very few, if any, of the lands involved in this controversy fall within the said *place limits,* and this construction, which is all that appellants contend for, and the most favorable one for them that can possibly be placed upon said acts, concedes to appellee all the lands involved in this controversy, with the exception, perhaps, of a few tracts in said *place limits.* It necessarily follows that, if the grant was definitely located on the line of 1869 north of said intersection, neither the St. Paul and Pacific Company nor the Manitoba Company was entitled to any other grant upon the line as finally located and constructed from twenty-five to thirty miles west of the said definite location.

A Congressional land grant, after definite location, ceases to be a float. It is no longer a shuttle-cock, to be thrown from one side to the other, to suit the whim or caprice of the grantee.

On page 80 of his brief, counsel also says:

"The company (Northern Pacific) when it marked on a map a partial and never surveyed line of general route, was well aware of the prior location of the St. Paul and Pacific Company in 1869."

At the time of filing and approval of the Northern Pacific Company's map of general route, it had knowl-

edge that the said map of 1869 of the proposed line of the St. Paul and Pacific Company had been rejected by the Secretary of the Interior, and that the lands involved in this controversy were then free from claim or reservation of any character.

It will certainly not be argued that Congress intended by the grant to the St. Paul and Pacific Company to interfere either with existing rights of pre-emption or homestead claimants, or of the State to its swamp lands, or of other railroads to their withdrawn and reserved lands.

Appellant's counsel, in construing the said act of March 3, 1871, disregards the following facts:

First. That the new grant made therein was in "consideration of a relinquishment of lands."

Second. That the roads provided for by said act were "instead of the construction of a line from Crow Wing to St. Vincent * * * and in lieu thereof."

Third. That the grants were "to be taken in the same manner along said altered lines as provided for the present lines by existing law."

Fourth. That the act was not to take effect until the releases provided for therein were filed.

Fifth. That the releases were to cover "all lands along said abandoned lines from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior.

Sixth. That the road, as finally located and constructed, does not intersect, or connect with the said line of 1869.

Seventh. That the intersection was to be with the *line* of the original grant and not the original grant.

Eighth. That the easterly line of the grant, as finally located, does intersect with the westerly line of the original grant north of the lands involved herein.

Supplemental Bill.

The principal object of the supplemental bill filed by the Manitoba Company in 1884, is to set aside the patent issued and delivered to the Northern Pacific Company in 1873 to certain lands within said conflicting limits.

Said bill cannot be maintained for the following reasons:

1st. The grant to the Northern Pacific Co., as heretofore shown, is prior in point of time to that under which the said Manitoba Company claims.

2d. The lands were withdrawn and reserved prior to the passage of the said act of March 3, 1871, and, by reason of the exceptions hereinbefore mentioned, not included in its grant made thereby.

3d. In the proceedings before the master in the Court below, the said Manitoba Company failed to prove that the line of the road or any part thereof, between St. Cloud and St. Vincent, had ever been definitely located, and also failed to prove a selection of any of the lands in controversy by the said St. Paul and Pacific Company, or its successor in interest, the Manitoba Company.

See Rec., p. 187.

Seeing, as before stated, the brief of Mr. Young, counsel for appellants, only recently, has caused an addition to our brief which has extended it to a greater length than we anticipated, and certainly much greater than is needed in view of the opinion of the court below in this case, which we commend to the consideration of this court as unanswerable and conclusive.

26 Fed. Rep., 551.

We want, however, in concluding, to call attention to the fact that the brief for appellants contains no assignment of errors, and is in disregard or violation of Rule 21 of this Court, which has been characterized as a "salutary rule."

Ober *v.* Gallagher, 93 U. S., 199.

And a failure to observe it justifies this Court in dismissing the appeal or affirming the case.

Greenwood *v.* Randall, 111 U. S., 775.
Minor *v.* Tillotson, 2 How., 392.
Mussina *v.* Cavazos, 6 Wall., 355.
James *v.* Bank, 7 Wall., 692.
Treat *v.* Jemison, 20 Wall., 652.

And it is respectfully submitted the decree below should be affirmed.

JAMES MCNAUGHT,
A. H. GARLAND,
H. J. MAY,
Counsel.

October 14, 1890.

Office Supreme Court U. S.
FILED
OCT 25 1890
JAMES H. MCKENNEY

Supreme Court of the United States,

OCTOBER TERM.

No. 54.

ORIGINAL BILL.

THE ST. PAUL AND PACIFIC RAILROAD COMPANY, JACOB S. WETMORE, THOMAS DENNY AND THOMAS W. PEARSALL, TRUSTEES, ETC., AND THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, *Appellants,*

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

SUPPLEMENTAL BILL IN THE NATURE OF A CROSS BILL.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

SUPPLEMENTAL BRIEF AND ARGUMENT FOR APPELLEE.

JAMES McNAUGHT,
AND
GARLAND & MAY,
Of Counsel for Appellee.

Evening Post Job Print, New York.

Supreme Court of the United States,

OCTOBER TERM.

No. 54.

THE ST. PAUL AND PACIFIC RAILROAD COMPANY; JACOB S. WETMORE, THOMAS DENNY and THOMAS W. PEARSALL, Trustees, &c., and THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY,

Appellants,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

Original Bill.

AND

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY.

Supplemental Bill in the nature of a Cross-Bill.

SUPPLEMENTAL BRIEF.

On the 14th of October, 1890, after we had written and printed our brief in this case we were furnished with a copy of the brief of Mr. S. U. Pinney, of counsel for ap-

pellant, and beg leave to notice briefly the statement and points contained therein.

Corrections of said Statement.

On page 2 of his statement, Mr. Pinney says:

"These lands (referring to the lands in controversy) had been mortgaged to defendants Thompson, Becker and Morehead as trustees for the holders of $15,000,000 of bonds."

Counsel, in the above quotation, begs the entire question involved in this case. The said lands, if withdrawn by reason of the provisions of section six of appellee's granting act, or the executive withdrawals made in 1870 for the benefit of appellee, and the excepting and reserving provisions contained in the granting acts to the St. Paul and Pacific Company, were not included in or covered by said mortgage.

No part of the road of the St. Paul and Pacific Company, through the lands involved in this controversy, had been constructed at the date of the execution of said mortgage or the sale of said bonds.

Section 4, of the Act of March 3, 1857 (11 Stat. at L., p. 195), prohibits any disposition of said lands prior to the construction of the section of the road opposite thereto. The Act of March 3, 1865 (13 Stat. at L., p. 526), provides for the patenting of lands thereby granted after the construction of the road.

In Section 6 of said act it is provided:

"That lands granted by this or prior acts shall not in *any manner be disposed of, except as the same are patented under the provisions of this act.*"

Said acts of Congress were, by reference, made a part of said bonds and mortgage, and the purchasers of said bonds were thereby given *notice* that said lands could not be mortgaged except as they were earned, and if, by any

reason, they were excepted from the operation of said acts prior to the patenting of said lands, that such lands so excepted and reserved were not and could not be covered by said mortgage.

On said page 2 of his statement Mr. Pinney further says:

"And, upon a suit by the bondholders, and also upon a suit of foreclosure of the mortgage or trust deed, Thomas P. Farley had been appointed Receiver of the St. Paul and Pacific Company, and its grant, &c., and was in possession."

The inference sought to be drawn by this statement, in connection with the preceding statements in said brief, is that Mr. Farley was in possession of the land in controversy at the date of the execution of said bonds and mortgage. Mr. Farley was not appointed Receiver until after the sale of said bonds, and the default in the payment of the interest thereon, and was not in possession of the property at the date of the execution of said mortgage.

On page 10 of his statement counsel says:

"The evidence shows that the point of intersection of the tenth standard parallel with the fourth guide meridian is at the northwest corner of township 140, range 32."

The map annexed to our original brief shows the said intersection to be at the northeast corner of township 140, range 32. This variance in statements, however, is not very material. An examination of the map will show that either location is on a substantially direct line from Crow Wing to St. Vincent.

On page 15 the counsel says that the St. Paul and Pacific Company had obtained the "right to relocate its branch line so as to run and construct the same from some point at or near St. Cloud to any point in the international boundary line near the Red River of the North, and was not required to construct or maintain said branch road by the way of Crow Wing."

The Legislature of the State could change the line of

the road, but not the grant. Crow Wing is one of the "calls" mentioned in the Acts of March 3, 1857, and 1865. and the State Legislature could not change the grant so as to destroy said call.

On page 21 Mr. Pinney says that the map of definite route of the St. Paul and Pacific Company's road from St. Cloud to St. Vincent was filed November 18, 1871. The map was presented at that date to the Secretary of the Interior for approval, it was not, however, accompanied by the releases required by the said Act of March 3, 1871. Said releases were not filed until December 19, 1871; and the Secretary, upon receipt of said releases, and after due consideration of the question, decided that the map should be considered as filed of that date, to wit, December 19, 1871.

See Record, 413.

The Northern Pacific Company's map of definite route was filed on the 18th, and approved on the 21st of November, 1871.

Counsel, on page 47 of his statement, says that the lands mentioned in said mortgage and bonds, *estimated at* 2,217,200 *acres*, were a total of ten sections per mile. That depends upon the length of the lines. They are described in the bonds and mortgage as *being estimated at* 293 *and* 55 *miles more or less*, the actual length, however, of the road from St. Cloud to St. Vincent is 320½ miles, or 27½ miles more than the estimate of the length contained in said bonds and mortgage.

See Record, 394.

Thus making the total grant 2,051,200 acres for the St. Vincent branch. Add to this the grant from Watab to Brainerd, a distance of 55 miles, and it makes a total grant of 2,403,200 acres, or 186,000 more than the total amount of the lands as estimated in said bonds and mortgage.

On page 66 of his statement counsel says that Mr.

Morehead, agent and trustee of the Northern Pacific Company, proceeded with the sale of $15,000,000 of bonds.

Although a committee was appointed by the Northern Pacific Company to assist in negotiating and selling the bonds, it does not appear from the testimony that said committee had anything to do with the sale. The bonds were sent to Mr. Willmar, in London, England (see Record, 481), and by Mr. Willmar delivered to and sold by Lippman, Rosenthal & Co., at Amsterdam.

See Record, 395-482.

It does not appear that the Northern Pacific Company, its directors, or any of its officers or agents, had anything to do with the sale of said bonds.

On page 68 counsel in his statement further says:

"We find it (the Northern Pacific Company) for the first time in the spring of 1873 making claim to the lands within the conflicting limits of the grants to the two companies."

The Northern Pacific Company made its first claim to the lands involved in this controversy when it filed its map of general route in August, 1870.

Its second claim when it filed its map of amended general route, October 12, 1870.

Its third claim when it filed its map of definite route, November 18, 1871, and caused it to be approved by the Secretary, November 21, 1871.

Its fourth claim December 26, 1871, when it procured the withdrawal of the lands within the first and second indemnity limits.

See Record, 333-4-6.

Its fifth claim was made June 20, August 1 and September 13, 1872, when it filed its selection lists of the lands patented to it in January, 1873, being the lands mentioned in the supplemental bill.

Its sixth claim was made when, in fall of 1872, it applied to the Secretary of the Interior and the President of

the United States for the appointment of commissioners to accept the road, upon which application the line of the road through the lands involved in this controversy was accepted, and the lands ordered patented by the President of the United States on the 6th day of January, 1873.

Its seventh claim was made when it applied for and received on January 18, 1873, a patent to part of the lands involved in this controversy.

It thus clearly appears that appellee, through the public records—of which would-be purchasers of bonds had notice—has been claiming since August, 1870, the lands involved in this controversy.

Counsel, on page 75 of his brief, further says:

"In the construction of the St. Vincent branch, at various points along the line, some slight departures were made from the line of definite location, * * * the largest limit of changes made from the line of definite location at any one point is four and one-half miles."

The Commissioner of the General Land Office, on May 27, 1880, after a careful examination of the question in reference to said departures said:

"But the road has not been constructed on the line of definite location. I enclose a map or diagram of Minnesota upon which I have caused to be drawn a red line showing the definite location, and a blue line showing the constructed road, illustrating, as nearly as practicable on a small scale, the deviation. It will be seen at a glance that the deflections are numerous, and in some instances long distances—*from six to ten miles from the located line.*"

See Record, 541.

On page 77 counsel further says:

"It also appears that neither party will be able to get its full quota of lands in Minnesota, giving it the full benefit of all the lands involved in this controversy."

We do not so understand the testimony. It is conceded that the Northern Pacific Company will not be able to obtain its full quota.

The Manitoba Company will not be able to obtain its full quota in place limits, but it has the right of selection in the 20-mile indemnity limits, and this right of selection includes lands lost by reason of the priority of the grants to the Northern Pacific Company.

There are many other errors and erroneous deductions in said statement, all of which we do not deem it necessary to notice. Some of them, however, will be noticed under the proper heads in the argument.

POINTS AND ARGUMENT.

Counsel for appellants, Messrs. Young and Pinney, do not agree as to the points involved in this case. As to the propositions presented by Mr. Young, we answered them in our original brief, and we will now endeavor to answer those presented by Mr. Pinney, in so far as they materially differ from those presented by Mr. Young.

They are as follows:

First.—That appellee's statutory withdrawal under Section Six of its charter did not and could not withdraw the lands involved in this controversy from the operation of the granting acts under which appellants claim.

Second.—That no lands were surrendered or released under the Act of March 3, 1871; that said act was simply a relocation of existing grants, and nothing more.

Third.—That appellee acquired no rights by the filing and approval of, and withdrawals under, its map of amended general route of October 12, 1870.

Fourth.—That the indemnity lands involved in this controversy have not been selected by appellee.

Fifth.—Estoppel *in pais*.

1st. The said first proposition is presented by Mr. Pinney under two heads. He argues that—

(*a.*) The withdrawal, under the map of general route, did not vest in the company a right to any specific lands, and this fact, in connection with the right reserved by Congress to alter, amend and repeal the Northern Pacific granting act, left all the lands within the limits of said withdrawal subject to be disposed of by Congress at any time thereafter and before the filing of the map of definite route, and that Congress did, within said time, dispose of said lands to the said St. Paul and Pacific Company.

It is not necessary, in this case, to discuss the question as to the power of Congress to interfere with the inchoate and inceptive rights of the Northern Pacific Company to the lands involved in this controversy, after the filing and approval of its said map of general route, and the making of the withdrawals aforesaid thereunder. The lands were thereby reserved by Act of Congress and competent authority, and therefore excepted from the operation of the acts under which appellants claim.

See proviso to Section 1, Act of March 3, 1857, 11 U. S. Stat., 195.

Section 3, Act of March 3, 1865, 13 U. S. Stat., 226.

Act of March 3, 1871, 16 U. S. Stat., 588.

Wisconsin C. Ry. Co. *vs.* Forsyth, opinion Justice Harlan.

(*b.*) Counsel further contends that the Northern Pacific Company's grant is one *in presenti* in the sense only that the company is entitled to what is left not "granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of" at the time of filing its map of definite route.

Without conceding or arguing the question as to whether the grant is one *in presenti* in the limited sense only above mentioned, we submit that the proposition is well settled, that said legislative and executive withdrawals protected and reserved the land for the benefit of the Northern

Pacific Company, from the date of said withdrawals to the date of filing the said map of definite route.

Butts *vs.* Northern Pacific R. R. Co., 119 U. S., 55.

Denny *vs.* Dobson, 32 Fed. Rep., 899.

United States *vs.* Northern Pacific R. R. Co., 41 Fed. Rep., 842.

Northern Pacific R. R. Co. *vs.* Majors, 5 Montana, 111.

Northern Pacific R. R. Co. *vs.* Lilly, 9 Pac. Rep., 116.

The lands involved in this controversy were reserved at the time of the filing and approval of the map of the St. Vincent branch, December 19, 1871, and therefore excepted from the operation of appellants' granting acts.

2d. The second proposition made by Mr. Pinney which we desire to answer is, "that no lands were surrendered or released under the Act of March 3, 1871; that said act was simply a relocation of existing grants and nothing more."

Mr. Pinney, on page 100 of his printed brief used in the trial of this case in the Court below, said:

"The Act of March 3, 1871, was designed to accomplish a change of line, and an exchange of lands from those along the old line to those found upon or along the line of the new one; the right to the lands still resting upon the original grants of March 3, 1857, and March 3, 1865. This is plain, not only from the title of the act, but from its text. *If it made the proposed change, which was optional with the St. Paul and Pacific Company, it was to execute proper releases to the United States of all lands along said abandoned line from Crow Wing to St. Vincent*, and from St. Cloud to Lake Superior, and upon its *new or more direct route* it was to have 'the same proportional *grant of lands, to be taken in the same mnaner*, along said altered lines as is provided for the present lines by existing laws.' That is to say, its rights along the abandoned lines were to be transferred to the new ones. *It was a mere exchange of lands that was contemplated,*

and whether any such exchange should take effect was optional with the St. Paul and Pacific Company."

On page 101 counsel further says:

"*The meaning of the act is that the St. Paul and Pacific Railroad Company should not have the benefit of the act unless it released the lands along the abandoned lines, so as to reinstate the United States in its former full title thereto, nor unless the change of line should be in accord with the legislation of the State of Minnesota in respect to its railway system.*"

On page 102 of said argument counsel further says:

"The Act of March 3, 1871, gave the company the election between *two different* and *inconsistent rights*, and when it made its selection by the passage of the resolution of March 22, 1871, and made and filed the plat with the Secretary of the Interior, it determined its choice in favor of the *new lines* and the *rights pertaining to them*, and *conclusively abandoned the old ones and the rights connected therewith.*"

On page 103 of said argument counsel further says:

"So, too, in respect to the location and survey as to the point that it did not connect 'with the line of the original grant at or near Otter Tail or Rush Lakes, so as to form a more direct route to St. Cloud;' its route was some fifteen or twenty miles from these lakes. *The requirement was to make 'a more direct route to St. Vincent.'*"

It will be observed that counsel, in his argument in the Court below, did not claim that the new grant connected with the original grant at or near Otter Tail or Rush Lakes, or at any other place. He conceded that the requirement of the Act of March 3, 1871, was to make "a more direct route to St. Vincent," and that, too, without reference to a connection with the line of the old grant at or near Otter Tail or Rush Lakes. He conceded that no such connection was ever made, and we may fairly presume, therefore, that none was required by said act. He also conceded that the lands along the old lines from Crow

Wing to St. Vincent, and from St. Cloud to Lake Superior, were all released.

On page 137 of his argument filed in this Court he says:

"We now submit, with confidence, that the Act of March 3, 1871, authorizing the St. Paul and Pacific Company to change its line in consideration of the relinquishment of lands, must be construed as an act to authorize a change of the location of an existing land grant to a new line. The word 'grant' and the word 'line' in this case, as heretofore noted, are used in the same sense or signification."

On page 138 he further says:

"This is not a *new grant;* it is a provision for the relocation of an existing one; for an exchange of the rights acquired under the existing grant to a new line. * * * It was intended, in order to carry out that purpose, to legalize and change in part the Shepard line of survey and location. It was under consideration by the Department of the Interior. No other possible construction can give any effect to the provisions of the Act of March 3, 1871; 'and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lakes.' There is no ground for any pretense whatever that the original grant lay in that direction, other than it had been so located by the Shepard survey under the legislation to which we have already made reference."

It is to be observed that in the Court below the counsel said that the lands along the abandoned lines were to be *released;* in this Court, he says they were *not to be released.* In the Court below, he said that the object of the Act of 1871 was to make a direct line from St. Cloud to St. Vincent, without reference to Otter Tail or Rush Lakes. In this Court, he says the object of the act was to *legalize* and *change in part only the Shepard line.*

Mr. Young, in his printed argument filed in this Court, does not agree with either the position taken by Mr. Pinney in the Court below or in this Court.

Mr. Young argues that the Act of March 3, 1871, created a *new grant* from St. Cloud to the intersection with

the line of the original grant, at or near Otter Tail and Rush Lakes; and thence north from that point to St. Vincent the grant is under and by virtue of prior acts. But Mr. Pinney says in the above quotations:

"There is no ground for any pretense whatever that the original grant lay in that direction (meaning Otter Tail and Rush Lakes), other than it had been located by the Shepard survey under the legislation to which we have called attention."

In this quotation Mr. Pinney refers to the various acts of the Legislature of the State of Minnesota. The State had a right to provide for the building of lines of railway and the changing of such lines, but it had no right to vary the location of the grant by Congress from the calls mentioned in the granting act.

In order to sustain the position contended for by Mr. Pinney, to wit: that the words "grant" and "line," as used in the Act of 1871, "are of the same signification," and that the said act "provided for a relocation of existing grants and nothing more," it will be necessary for this Court to do some judicial legislating. It will be necessary for you to eliminate from the title of the said Act of March 3, 1871, the word "line," and interpolate in its place the word "grant," and eliminate the word "change" and substitute therefor the word "locate," and to eliminate entirely and substitute nothing in the place thereof, the words "in consideration of a relinquishment of lands;" and eliminate from the act altogether the words "grant of lands to be taken in the same manner along said altered lines as is provided for the present lines by existing laws;" and also the words "that this act shall only take effect upon condition that proper *releases* shall be made to the *United States* by said company *of all lands along said abandoned lines from Crow Wing to St. Vincent*, and from St. Cloud to Lake Superior, and that upon the execution of said releases, *such lands so released* shall be considered as immediately restored to market without further legislation."

If the act provides, as counsel argues, for a relocation of the old grant, why the necessity of providing for the release of any lands? If it was a relocation, and nothing more, no granted lands, by such relocation, would be restored to market.

In construing these statutes, it must be remembered that the grants provided for by the Acts of 1857 and 1862 and '65 were not perfect floats. The calls in said acts required the grants to be located from St. Anthony via St. Cloud, Crow Wing and the intersection of the tenth standard parallel with the fourth guide meridian to St. Vincent, and from St. Cloud, or some other point on the branch line, to Lake Superior.

The law required the road between said points to be constructed on a direct line, subject, however, to certain limited deflections made necssary by the topography of the country. In that sense the grants were floats.

Appellants' counsel concede that the line, as located, is not within the limits of said "calls" and "floats," and it must be admitted that whatever rights said company had, or has, along said line it acquired under the said Act of March 3, 1871. The rights so acquired therefore are subsequent to the grant to the Northern Pacific Company, and subsequent to its executive and legislative withdrawals.

It is further provided in said Act of 1871 that it should not take effect until the releases provided for therein of the lands along the original lines were filed in the Department of the Interior. Said releases were not filed until December 19, 1871.

The St. Paul and Pacific Company had not, prior to that time, exercised the option conferred upon it by the Act of 1871, of accepting the provisions of said act, and it had no claim whatever to any of the lands involved in this controversy prior to the exercising of said option, and the releasing of the lands within the original grant. At that time the title in fee to the lands within the place limits of the Northern Pacific Company's granting act and involved in this controversy, had vested in said company, and it is not contended in this case that there is any

language in the said Act of 1871, or in any of the granting acts under which appellant claims, by which any attempt is made to interfere with and forfeit vested rights. On the contrary, by the express provisions of said acts, all lands reserved, or in and to which private rights have attached, are excepted and reserved from the operation of said acts.

In this connection Mr. Pinney further argues that the said Act of 1871 is a recognition of the location of what is known as the "Shepard Line" of 1869 in part, and a change of said line in part.

His argument upon this proposition, in part, agrees with that of Mr. Young. They both argue that this act is a recognition of the Shepard line, north of Otter Tail and Rush Lakes. Mr. Young says that the grant attached to the *lands in place along that part of the Shepard line immediately upon the approval of the act, to wit, March 3*, 1871. Mr. Pinney in several places in his printed argument says that the said act was a recognition of the validity of said location.

On page 165 of his argument he also says:

"The detour to the westward mentioned by the Court had been made by the line of 1869, and *that line was in the legislative mind as the line of the grant, which it had a right to recognize and treat as such in the passage of the Act of March* 3, 1871."

The certificates to said map describe the same as a map of "*definite location.*"

See Exhibit 7.

Mr. Pinney further says:

"This Act of Congress thus operates to give legal priority to the grant to the St. Paul and Pacific Company."

If this position is the correct one, the line was definitely located between township 135 and the centre of township

142, in ranges 39, 40 and 41, and the grant attached immediately, upon the approval of said act, to the lands within the place limits of the grant, and the title in fee then vested in the St. Paul and Pacific Company to said place lands.

The said line is thirty miles east of the line described in Exhibit 6, and from twenty-five to thirty miles east of the line upon which the road was actually constructed, and includes but very few acres, if any, of the land involved in this controversy.

If the grant attached to said place lands along said Shepard line of 1869, it must be conceded that it could not attach to the lands along the line upon which the road was constructed.

Mr. Pinney, to sustain his construction of the Act of 1871, further argues that the usual formula of granting words, to wit, "That there be and is hereby granted," are not found in the Act of 1871, and concludes that for that reason no grant was made thereby. However, he concedes that the first section of the Act of 1865 does not contain the words, "That there be and is hereby granted," or the usual words in which grants are made; yet he maintains that said section, without said words, not only made a grant of four additional sections per mile along existing lines, but in connnection with Section 9 of said act, which does not contain said usual granting formula, made a grant of ten sections per mile for each mile of the road from the intersection of the tenth standard parallel with the fourth guide meridian to St. Vincent.

A slight examination of the various land grants will show conclusively that there is nothing whatever in this contention, and that grants are often made without the use of the words "That there be and is hereby granted."

Counsel argues that the existence of the word "granted" in the exceptive provisions of the third section of appellee's granting act, and allowing indemnity for lands granted to other railroads prior to the filing of appellee's map of definite route, is the distinguishing feature between the grant to appellee and that under which appellants claim.

We submit that this is a misinterpretation and construction of the law.

Section One of the Act of March 3, 1857, provides for indemnity lands as follows:

"It shall be lawful for any agent or agents to be appointed by the Governor of the Territory, or any future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections so specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or *otherwise appropriated*, or to which the rights of pre-emption have attached as aforesaid.

Lands thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with sections and parts of sections designated by odd numbers as aforesaid, and *appropriated* as aforesaid, shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid."

The Interior Department and the courts construe such a provision as authorizing the selection of lien lands for lands granted by Congress to other railroad companies at any time prior to the filing and approval of the map of general route.

See decision of Mr. Secretary Lamar in construing the Chicago, St. Paul, Minneapolis and Omaha grant, 6 Decisions Relating to Public Lands, 195-7-8.

Winona and St. Peter Railroad Company *vs.* Barney *et al.*, 112 U. S., 618.

Appellants' counsel further argue that the said Act of March 3, 1871, as to so much of the previous acts as applies to lands north of Otter Tail and Rush Lakes, is declaratory. They admit that the grant existing under the Congressional legislation prior to the Act of 1871 could not have been located so as to include any of the lands involved in this controversy. They also admit that the said Act of 1871 is the only one appplying to, or

making a grant along the line from St. Cloud to St. Vincent.

In construing a statute so as to determine whether it creates a *new right*, or is declaratory as to what the law was prior to the date of said statute, we must constantly keep in mind the rules of statutory construction.

To declare what the law *is or has been* is a judicial power. To declare what it *shall be* is a legislative power.

A statute will not be adjudged to operate either as a new rule for the government of a past case, or as interpreting a former statute for the direction of the courts, *unless such intention is made manifest by express words.*

It is also a fundamental canon of construction that a statute creating new rights and liabilities shall not be construed so as to act upon those already existing, created by earlier statutes, and affecting parties not mentioned in the new statute. To give a new statute such a retroactive effect, its language should be mandatory and declare such intention in express terms.

It is the constant care of the judiciary to give all laws a future operation only so as not to interfere with or destroy rights entered into upon the faith of, or created by previous legislation, and a statute will never be construed as retrospective unless its language is so clear as not to be susceptible of any other construction.

Sedgwick on Construction of Statutory and Constitutional Law, 2d Ed., 167 and 173.

There is no language in the Act of 1871 from which can be inferred an intent to interfere with or destroy any of the inchoate, inceptive, or other rights of the Northern Pacific Company, acquired by virtue of its granting act, the location of its road, the filing of its maps of general and definite route, and the withdrawals thereunder.

3d. Counsel further argues that appellee acquired no rights by the filing and approval and withdrawals under its map of amended general route of October 12, 1870.

This proposition cannot be sustained for the following reasons:

(*a.*) The point was not made in the trial in the Court below, or before the Master, and therefore cannot be urged here.

Mr. Pinney, on pages 72–3 of the printed argument filed by him in the Court below, says:

"The fixing of the general route of the road of the Northern Pacific Company, under the sixth section of its charter (fol. 55), and the provision of that section that the 'odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company as provided in this act,' did not serve to authorize the withdrawal of any lands for the benefit of the Northern Pacific Company that had been before then granted to the Territory or State for the benefit of the branch road to St. Vincent, or that would fall within the place limits of its grant when located. The withdrawal under Section 6 of the complainant's grant of lands from sale or entry or pre emption did not and could not withdraw them from the operation of our prior grant."

On page 79 of said brief, referring to the Northern Pacific granting act, Mr. Pinney further said:

"The filing of a map of the entire route is as indispensable as that anything shall be done beyond a mere adoption of a line of location. Had it utterly failed to file any map at all, although it had constructed the entire road, the result must have been the same and utterly fatal to the pretensions of the Northern Pacific Company."

On page 80 of said brief Mr. Pinney further says:

"*Before the Northern Pacific Company had fixed its general route*, and before the St. Paul and Pacific Company had made any attempt to locate its branch road beyond Crow Wing, and about the close of the war, a revival in railway enterprises took place."

Throughout his entire argument Mr. Pinney recognized the validity of the map of general route; he said nothing

whatever concerning the amended map of part of the route. His only contention was that no rights vested in the Northern Pacific Company until it had filed its map of *definite route of the entire line.*

In the proceedings before the Master, the counsel for the St. Paul and Pacific Company, trustees, and the St. Paul, Minneapolis and Manitoba Company objected to the receipt of any evidence concerning lands not included within the withdrawals and selected prior to the bringing of this suit.

See Record, 191-2.

Appellant's ninth exception to the Master's report is as follows:

"9th Exception. For that there was no proof produced before the Master to show that any definite location of the entire line of the route of the Northern Pacific Railroad Company had been or was (made) before the commencement of this suit, or before the making of the several selections of lands from the 30 and 40 mile indemnity limits of the grant claimed by said company, reported by said Master to this Court, or any or either of them."

It appears that the only point relied upon in the Court below concerning the route is the one also presented here, that the map of definite location of the entire line had not been filed and approved at the date of the commencement of this suit.

(*b.*) But, suppose the point can be made here for the first time, is it a good one?

Counsel says that Section Six of the Act of July 2, 1864, does not apply to an amended general route, and that there can be but one withdrawal only.

If this position is correct, it follows that there is nothing in the Northern Pacific granting acts tending to prohibit the Secretary of the Interior from exercising the power of withdrawal along its amended route.

(*c.*) Counsel argues, in connection with another proposition that the line of the road is subject to change at any time before the filing and approval of the map of *definite route.* This proposition we concede.

In this case, a map of the line of the general route was filed and approved. Thereafter, before October 12, 1870, the Northern Pacific Railroad Company produced good and sufficient proof to the Secretary of the Interior, by which it established the fact that the public and the company would be materially benefited by a slight change of the general route. The Secretary of the Interior, after a careful examination of the facts presented, in pursuance of a wise discretionary power vested in him, found that the original map had either been approved without sufficient evidence warranting it, or that the line had not been located properly, and that the public would be materially benefited by the change, and permitted the amendment. At that time, the St. Paul and Pacific Company had no interest in the land involved in this controversy. It could not have constructed its road, under the then existing acts of Congress, so as to include any part of said lands. It exercised its option in accepting the provisions of the Act of March 3, 1871, with full knowledge of the said decision of the Secretary of the Interior, the said amended map, the withdrawals thereunder, and the inchoate and inceptive rights of the Northern Pacific Railroad Company, and it must now be conclusively presumed that it exercised its said option, changed the location of its lines, released its old grant and accepted the new, with the understanding and intention that the rights it acquired thereby should be subject and subsequent to the prior rights of the Northern Pacific Railroad Company in and to the lands involved in this controversy.

The appellants were not interested in the question of the changing of the route at the time the change was made. At that time it was only a question between the Railroad Company and the Secretary of the Interior, representing the Government and the people. The Gov-

ernment is not questioning the approval of the amended location; the appellants, for the reasons aforesaid, are not in a position to do it.

Buttz *vs.* Northern Pacific R. R. Co., 119 U. S., 55.
Denny *vs.* Dobson, 32 Federal Rep., 899.
Southern Pacific R. R. Co. *vs.* Orton, 32 Fed. Rep., 457–68–79.
Van Wyke *vs.* Knevals, 106 U. S., 360–66–7.

(*d.*) For more than twenty years last past the Interior Department has construed appellee's and other granting acts as authorizing and warranting the changing and amending of maps of general route.

This practical construction, continued for such a length of time, will be followed by the courts.

See authorities cited under the third proposition in our original Brief.

4th. The fourth point presented by Mr. Pinney, meriting further notice, is, that the lieu lands within appellee's indemnity limits, and involved in this controversy, have not been duly selected by appellee.

In addition to what we have already said in the original brief upon this subject (see pages 75 to 83), we desire to add the following suggestions.

Appellee, in its bill in the Court below, among other things, avers:

"The fixing of the general route of the Northern Pacific Railroad August 13, 1870, as hereinbefore stated, under the provisions of the sixth section of your orator's charter all the odd numbered sections of the lands for 4 miles in width on both sides of said line of general route were by operation of law absolutely withdrawn and reserved until the full amount or quantity of lands granted by Congress to your orator in the state of Minnesota should be secured to and obtained by your orator for the purposes specified in said Act of July 2, 1864; notwithstanding which in the early part of the year 1873 the St. Paul and Pacific Railroad Company, after its entire abandonment of the work of construction of its road,

began to assert a prior claim to a portion of said lands so withdrawn and reserved for and granted to your orator, said claim of priority being asserted on a pretense of said St. Paul and Pacific Railroad Company that its rights thereto took effect from and under and related back to the said Act of Congress, approved March 3, 1857. *The said question as to which of said corporations, your orator or the said St. Paul and Pacific Railroad Company, was entitled to the lands within the conflicting limits of their respective alleged grants*, was by the said St. Paul and Pacific Railroad Company, or in its name, brought before the Commissioner of the General Land Office in or about the month of March, 1873, when that officer decided said question in favor of your orator and against said St. Paul and Pacific Raidroad Company. A selection was made for the purpose of initiating said contest by the last-named company of certain lands within the ten-mile limits of the alleged grant of that company and between the 20 and *30-mile* limits of the lands granted to your orator, embracing about 1,920 acres. An appeal was taken by said St. Paul and Pacific Company from the said decision of the Commissioner to the Secretary of the Interior, who, on the 13th day of May, 1873, decided that the lands then in controversy should be awarded to the said St. Paul and Pacific upon her showing that she had fully complied with the law in the construction of her road. The Secretary, in his said decision, held that the fixing of the general route of the Northern Pacific Road did, under the sixth section of your orator's charter, exempt the odd sections for forty miles in width, on both sides of the road, from sale, entry or pre-emption, but that the sixth did not prohibit an appropriation of the lands for the satisfaction of a prior railroad grant, and that the said Act of Congress, approved March 3, 1871, is an amendment of the Act of March 3, 1857, and should be construed as though it were inserted in that act, and when thus read the lands then in controversy were not reserved to your orator by the Act of July 2, 1864, before the passage of the Act of March 3, 1871, and are not within its terms. * * * The said decision of Secretary of the Interior was arrived at and made through mistakes of the law of the case on every point, and through ignorance, mistakes, and misapprehension of the facts, and was not deemed by him or the department to be final. * * * The only claim which the St. Paul and Pacific Railroad Company or the State of Minnesota has or can have to the said lands or to any of them is by,

through or under the said Act of Congress approved March 3, 1871. * * * And your orator has not done, caused, or permitted, any act or thing whatsoever, by which its claim, right title or interest in and to said described lands have been in any manner impaired or defeated, but the said lands and every part thereof in equity and of right belong to your orator."

Complainant's bill was taken *pro confesso* against the St. Paul and Pacific Railroad Company and the State of Minnesota, they thereby admitting all the allegations in said bill. The other defendants, Wetmore, Denny and Pearsall, Trustees, and Farley, Receiver, answered said bill, and in said answer fully set forth the claims of the St. Paul and Pacific Railroad Company, and the trustees and bondholders to said property, and the reasons why the Northern Pacific Company was not entitled thereto, and it is nowhere therein averred that the Northern Pacific Company had not complied with all the conditions of its granting act entitling it to the lands in question. They, in said answer, aver that:

"The question as to which of said corporations, the complainant or the said St. Paul and Pacific Railroad Company, was entitled to the lands within the conflicting limits of their alleged grants was brought before and submitted to the department at Washington, in the manner and form, and with the results stated in said bill of complaint."

See Record, 68.

It thus appears that the only question between the contesting land grant companies was one of priority of grant. It was conceded that each had complied with the conditions of its granting act entitling it to the lands involved in the controversy, in so far as compliance was possible.

The St. Paul, Minneapolis and Manitoba Railway Company, after the formation of the issues aforesaid, and the taking of complainant's bill *pro confesso, pendente lite* at a judicial sale, were the rule of *caveat emptor* applies, purchased the property of the St. Paul and Pacific Rail-

road Company, and thereby purchased the right to become a party to this suit by supplemental bill. The right thereby purchased did not authorize the Manitoba Company to deny what had been previously admitted by the parties in interest. The said purchaser could not, by supplemental bill or otherwise, change or add to the issues then presented in this case. At most, it only acquired the right to protect the property purchased upon the issues then existing, unless, for good cause shown, they were permitted to be modified or changed by the Court. No such permission was given. The said purchaser was permitted to file a supplemental bill to protect its interest thus acquired to the lands described in the bill, and to about thirty thousand acres of land which had been patented to the Northern Pacific Company. The claims of the Manitoba Company are set forth in said supplemental bill, and it is nowhere averred or alleged that the Northern Pacific Company has not selected said indemnity lands.

It is averred in said supplemental bill that the question as to the rights of the parties to the lands involved in this controversy was submitted to the Interior Department in the manner set forth in the original bill and it is also averred that "the Northern Pacific Company claims to be entitled to priority of right in indemnity limits, and is endeavoring to obtain patents for all lands on the odd numbered sections within the geographical place and indemnity limits of its grant."

Upon the foregoing averments, with the evidence which will be hereafter referred to, the case was submitted to the Court.

Mr. Pinney, from page 108 to page 111 inclusive, of his printed brief filed in the Court below, discusses the rights of the companies to the lieu and indemnity lands, but nowhere says that the Northern Pacific Railroad Company had not duly selected said lands.

We find the first mention of the question now under consideration was made before the Master, to whom the case had been referred for the purpose of ascertaining the lands to which complainant was entitled under the de-

cision of the Court. Upon Exhibits "C," "D," "M," "P" and "Q" being offered in evidence, counsel objected to receiving the same, not upon the ground that a selection had not been made, but upon the ground that a selection had not been made before the commencement of the suit in the Court below.

See Record, 187–8.

On the 26th of December, 1871, the registers and receivers of the local land office in Minnesota were instructed by the Commissioner of the General Land Office, to eliminate from the selection lists presented by the Northern Pacific Company all lands sold, granted, or otherwise appropriated at the time of the filing and approval of its map of definite route.

Record, 333–4.

During the year 1872, however, the company was permitted to select one hundred and ninety thousand two hundred and ninety-nine and seventy one-hundredths ($190,299\frac{70}{100}$) acres of land, located about Glyndon in the State of Minnesota. The selection lists of said lands were filed June 12, August 1, and September 30, 1872, and the lands described in the patent issued to the Northern Pacific Company January 18, 1873, are a part of the lands included in said selection lists. The preamble to said patent reads as follows:

"Whereas, certain tracts of land have been selected by Geo. B. Wright, a duly authorized agent of the Northern Pacific Railroad Company, as shown by his original list of selections bearing date June 12, August 1, and September 30, 1872, and certified under dates of July 1, August 27, and September 30, 1872, by the register and receiver at Alexandria, Oak Lake, Minnesota."

Early in 1873, as heretofore shown, the question as to which of said land grant companies was entitled to the lands involved in this controversy was submitted to the Commissioner of the General Land Office, and by him decided in favor of the Northern Pacific Company; an appeal

was taken from this decision to the Secretary of the Interior, who, as heretofore shown, reversed said decision. The Northern Pacific Company thereupon filed a petition for a review.

November 14, 1873, the Commissioner of the General Land Office instructed the registers and receivers not to take any action upon the selection lists presented by the Northern Pacific Railroad Company, or other lists relating to the same lands, until after the said petition for a review had been passed upon by the Secretary.

See Record, 331.

March 27, 1874, the Secretary of the Interior denied the application of the Northern Pacific Company for a review.

See Record, 332.

Immediately thereafter the lands involved in this controversy, except the thirty thousand acres patented to appellee, were patented to the St. Paul and Pacific Company.

Chas. B. Lamborn, at the trial, testified that the Northern Pacific Company had selected its lieu and indemnity lands in Minnesota.

See Record, 486-7-8.

Part of the selections were approved.

See Exhibits "F," "I," Rec., 554.

Every intendment is to be made in favor of the Master's report, and we assume that if the record contained Exhibits "M," "P" and "Q," said exhibits, taken in connection with Exhibits 10, 11, 12 and 13, would show that all the lands involved in this controversy had been duly selected by the Northern Pacific Company.

See Record, 188, 196 to 320.

From the foregoing issues and facts, and those set forth from pages 75 to 83 in our original brief, we conclude that the Court must find that said indemnity lands were either

duly selected, or a selection thereof waived by the contesting land grant companies and the Department.

We also conclude in a case like this, where the lands were by the Interior Department, under a mistake of law, awarded and patented to the wrong party, selections are not necessary.

The foregoing conclusions are presented in addition to those made in our original brief. See authorities cited in the said brief under this head.

5th. Is the Northern Pacific Company equitably estopped from asserting its title to the lands involved in this controversy?

Mr. Pinney in his statement of facts, and frequently in discussing the other propositions involved in this case, charges the Northern Pacific Company with fraudulent misrepresentations and conduct concerning the title and claim to said lands. On page 84 of his brief he says:

"As against the latter company (Manitoba) deriving its title through the $15,000,000 mortgage, its claim is wrongful and inequitable in the last degree, and upon all principles of integrity of action and fair dealing its claim ought not to be allowed to prevail in a court of equity."

On page 69, and as a part of the statement, counsel further says:

"It is vested with all the equities of the bondholders as to whom the change of policy and claims of the Northern Pacific Railroad Company, as now insisted upon, are grossly fraudulent and inequitable. It should be held estopped and bound by the rule of common honesty."

If abusive language and conclusions not founded upon or drawn from the pleadings, proofs or any principle of law applicable thereto, amount to facts, then the counsel has made out a strong case. Stript, however, of such language and deductions, and there is nothing left except the Acts of Congress and public records with which all the world is presumed to be familiar.

Whether or not the original bondholders were vested with any equities resulting from a change of policy and claims of the Northern Pacific Railroad Company, depends entirely upon the question whether or not said company, or its authorized agents, made to said bondholders at or prior to the time of their purchasing the bonds in question, any false or fraudulent representations upon which said bondholders relied in making said purchases. There is not a syllable of testimony in this case showing that the said company, or any of its officers or agents, at any time or place had any conversation or communication of any kind with any of the said bondholders. Not one of said bondholders has testified in this case that they relied upon any representation made by the said company, or any of its officers or agents. It is not even claimed that any statements made by the officers or agents of the Northern Pacific Company were ever communicated to any of said bondholders.

This Court, in the case of Ketchum *vs.* Duncan, 96 U. S., 666, said:

"Moreover, it is necessary to notice who sets up this plea of estoppel. An estoppel *in pais* does not operate in favor of everybody. It operates only in favor of a person who has been misled to his injury, and he only can set it up."

Therefore, it is not necessary for this Court to consider the character and nature of the conversations between Mr. Becker and three out of thirteen of the directors of the Northern Pacific Railroad Company. It clearly appears that, whatever said communications and conversations may have been, they were not communicated to the original bondholders. The original bondholders were, therefore, not misled by said conversations and communications to their injury.

The bonds in this case were signed by the first division of the St. Paul and Pacific Railroad Company and the mortgage by the St. Paul and Pacific Railroad Company. In said mortgage, the Act of March 3, 1871, is quoted in

full, and the Acts of March 3, 1857 and 1865, are referred to by their titles. The quantity of land was simply "estimated." The property covered by the mortgage was whatever the St. Paul and Pacific Company was entitled to, or might thereafter acquire under its grant. The bonds furnished the bondholders with knowledge that the amount of land had simply been "estimated," that the line had not been located, that the length of the St. Vincent line was described as "a line 293 miles in length, more or less," and that nothing was conveyed, or intended to be, except the lands then acquired, or thereafter to be acquired by reason of said granting acts. The said bonds and mortgage furnished the said bondholders with knowledge that lands covered by pre-emption and homestead claims, lands reserved by Congress or any other competent authority for any purpose, were excepted from said granting acts.

Said purchasers not only had knowledge, but the means of acquiring knowledge as to the "state of the title."

This Court in the case of Brant *vs.* the Virginia Coal Company *et al.* (93 U. S., 326–37) said :

"It is also essential for the application with respect to the title of real property, that the party claiming he was influenced by the conduct or declarations of another to his injury, was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

There is not a word of proof in this entire case that either the original bondholders or the Manitoba Company were "destitute of knowledge of the true state of the title." It is shown that the true state of the title was displayed by the Acts of Congress and the public records of the Interior Department.

It therefore appears that intending purchasers of bonds had means of acquiring knowledge, equal to those pos-

sessed by the Northern Pacific Company, of the title and claims to the property involved in this controversy.

Lake County *vs.* Graham, 130 U. S., 674, 83.
Dixon *vs.* Field, 111 U. S., 83, 92–96.
Northern Pacific R. R. Co. *vs.* Peronto, 14 N. W. Rep., 103, 106–7.
United States *vs.* Northern Pac. R. R., 12 Pac. Rep., 769, 770, 774.

We have clearly shown that no representations were made, or communicated to the original bondholders by the Northern Pacific Company or any of its officers or agents. We have also shown, if such representations were made—that they were not relied upon. The said Manitoba Company purchased the property of the St. Paul and Pacific Company at a judicial sale. It not only by the acts of Congress and the public records of the Interior Department had notice of appellee's claim to the lands involved in this controversy, but it purchased the rights of the St. Paul and Pacific Company at a sale were the "rule of *caveat emptor* applies in all its rigor."

See Rorer on Judicial Sales, 2d Ed., p. 77, Sec. 174, and note 3; p. 199, Sec. 476, and note 12.
The Monte Allegre, 9 Wheat., 616.
Osterberg *vs.* Union Trust Co., 93 U. S., 424.

The complainant in its original bill averred that the St. Paul and Pacific Company obtained patents to the lands involved in this controversy fraudulently, unlawfully and wrongfully.

See Record, 63.

The said St. Paul and Pacific Company, by permitting said bill to be taken against it *pro confesso*, admitted that it had fraudulently, unlawfully and wrongfully obtained said patents. The Manitoba Company, by purchasing the property of the St. Paul and Pacific Company at said judicial sale, did not become *subrogated* to the

equities of the bondholders (if they had any), it acquired only the rights of the St. Paul and Pacific Company, and *it cannot deny what that company in the record admitted.*

See Rorer on Judicial Sales, p. 77, note 3; p. 198, Sec. 475, and note 4.

The bonds and mortgage executed and issued by the St. Paul and Pacific Company, were made a part of the said foreclosure proceedings, and the said purchaser had notice thereof. Nothing was sold, or attempted to be sold, except the railroad from St. Cloud to St. Vincent, and the right and title which said company then had, or might thereafter acquire, in and to the lands granted it under said granting acts.

See Record, 554.

In the said foreclosure proceedings the bondholders did not allege or claim that they had acquired, by reason of the doctrine of estoppel or otherwise, any rights to any lands other or greater than those granted to the St. Paul and Pacific Railroad Company under and by virtue of said acts.

See Record, 555–6.

The Manitoba Company cannot now claim any lands by virtue of said sale other than such as were sold, and described in the decree and deed made in pursuance thereof. Said decree and deed do not purport to interfere with any of the equitable or legal claims and rights of the appellee.

It clearly appears from said bonds and mortgage that the length of the line between St. Cloud and St. Vincent was "estimated" at 293 miles "more or less," and that the land covered by the grant along said line was also "estimated" as amounting to ten sections per mile "more or less."

The word "estimate" is defined in Webster's Unabridged Dictionary as follows:

"To judge and form an opinion as to the value of *without actually measuring;* a value determined by *judg-*

ment; an *opinion* as to weight, magnitude, cost and the like; *a calculation without measuring.*"

The use of the words "more or less" also shows that the length of the line and the quantity of lands were "estimated," and that no representation as to the length of the line or the number of acres was intended.

Stebbins *vs.* Eddy, 4 Mason's Reports, 414, 421.

The length of the line, instead of being 293 miles as "estimated," is in fact 320½ miles, and the lands at ten sections per mile would be 186,000 acres more than the estimate.

See Record, 394.

The answer of the bondholders filed in this suit through their representatives, the trustees under said mortgage, clearly sets forth their claim and right, and it is not claimed in said answer that said bondholders relied upon, or were misled to their injury by reason of the said estimate of the length of the line or the number of acres of land. It is not claimed therein that they, by reason of any representation, fact or thing, were entitled to any rights other or greater than such as the St. Paul and Pacific Company acquired under its granting acts.

See Record, 77-8-9-80-1-2-3.

Mr. Pinney, in the stating portion of his brief, says:

"The First Division Company (meaning the first division of the St. Paul and Pacific Company), whose credit was then good in Holland, where it had borrowed the money for the construction of its own line of road, was to build these branch roads out of the proceeds of a new issue of its own bonds for $15,000,000 to be secured by a mortgage executed by the St. Paul and Pacific Company upon the roads so to be built, and upon the lands and franchises of that company."

The same facts very clearly appear from the answer of said bondolders.

After the bonds had been executed and sent to Mr. Willmar in London, England, and by him sent to Holland, they were submitted to the proposed purchasers, who, after an examination of the same, found an objection to the form thereof, and returned the same to St. Paul, and they were modified to meet the requirements.

It thus clearly appears that the said holders of said bonds did not rely, in the purchasing of said bonds, upon the representations of the Northern Pacific Company or any of its officers or agents, but made their purchase upon the credit of the First Division, and upon the property of the St. Paul and Pacific Company.

It also clearly appears that they could not have been misled, and they do not in their answer claim that they were misled, by anything contained in either the said mortgage or bonds.

Appellants' counsel, as bearing upon the question now under consideration, argues that the line of the St. Vincent branch was selected and located by the Northern Pacific Railroad Company with a view to securing certain advantages to itself, and to the detriment of the St. Paul and Pacific Company. The testimony clearly shows that the St. Paul and Pacific Company was materially benefited by the change.

See Record, 558–9.

Said bondholders in said answer aver that said St. Vincent line was selected, adopted and located by the said St. Paul and Pacific Company, acting by its agent, the said First Division Company, and it is nowhere in said answer claimed that the Northern Pacific Company had anything to do with said location.

See Record, 80.

The Manitoba Company's counsel claims that the Northern Pacific Railroad Company appropriated to its own use $2,500,000 of the proceeds of said bonds, and for that reason they claim that the Northern Pacific Company ought

to be estopped from asserting its claim to the lands involved in this controversy.

The bondholders, through their representatives, the trustees, averred in the foreclosure proceedings that the First Division Company wrongfully diverted, with the connivance and consent of said Becker and Morehead, a large proportion of the proceeds of said bonds, and in the answer of said trustees filed in this case they recite the substance of the allegation in their bill in equity filed in the foreclosure proceedings.

See Record, 84.

It is nowhere therein averred that the Northern Pacific Railroad Company, or any one acting as its officer or agent, diverted, or assisted in the diversion or wrongful appropriation of any of the proceeds of said bonds, and appellants' conclusion that the Northern Pacific Company was in any way connected with the said wrongful use of part of said proceeds is based upon the averment that Morehead, as trustee, connived at and consented to such wrongful appropriation by the First Division Company, and that the Northern Pacific Company owned the majority of the stock of the said First Division Company.

Admitting the facts, they do not warrant the conclusions drawn therefrom, especially in the face of the averment in the answer, that the wrongful diversion was by the First Division Company and not by the Northern Pacific Company.

See Record, 84.

The Manitoba Company purchasing at said foreclosure sale, without a waranty, and where the rule of caveat emptor applies, acquiring nothing but the right and title of the St. Paul and Pacific Company to its granted lands and the St. Vincent railroad, has no interest whatever in the question of the misappropriation by the First Division Company, or any company.

It is also urged by appellants' counsel as bearing upon this proposition that the Northern Pacific Railroad Com-

pany, by its granting act, is given the right to select indemnity lands for losses caused by grants to other railroad companies, and that the St. Paul and Pacific Company is not accorded such a right of selection, and therefore the Northern Pacific Company ought to be required to surrender its legal and equitable claims to the lands involved in this controversy.

We submit that counsel is mistaken as to the law involved in this question in so far as the St Paul and Pacific Company is concerned. That company has the right to indemnity for lands lost by grant to other railroad companies.

See Chicago, St. P. M. & O. R. R. Co., 6 Decisions Relating to Public Lands, 195-7-8-9.

Winona and St. Peter R. R. Co. *vs.* Barney *et al.*, 113 U. S., 618.

Appellants' counsel further suggest that the assistance of the Northern Pacific Railroad Company in securing the enactment of the said Act of 1871 estops said company from claiming any of the lands within the conflicting limits created by its location under said act. The act does not purport to interfere with existing rights of preemption and homestead claimants, the State to its swamp lands, or the Northern Pacific Company to its granted lands. It is not shown, however, that the purchasers of the bonds relied upon, or had any knowledge of the fact that the Northern Pacific Company aided in securing such enactment. The representations and conduct of the Northern Pacific Railroad Company prior to the execution and delivery of said bonds and mortgage are immaterial. According to all rules of evidence, they were superseded by the solemn instruments between the parties.

Van Weel *vs.* Winston *et al.*, 115 U. S., 228, 42.

Counsel further contends that the estimate in the bonds and mortgage as to the number of acres of land covered

thereby was not a mere opinion as to the number of acres of land that would inure to the company under its grant.

He says:

"It was a statement as to the number of acres *that had inured to it.*"

In this, counsel is clearly mistaken. The acts of March 3, 1857, and 1865 prohibit any disposition of the lands by the State prior to the construction of the road.

At the date of said mortgage, not a foot of the road through the lands involved in this controversy had been constructed, the releases required by the Act of 1871 had not been executed and filed. The St. Vincent branch did not have title to an acre of land along its line from St. Cloud, via Glyndon, to St. Vincent. *The estimate, then, was a mere opinion as to the number of acres of land that would inure to the company under its grant. The law of estoppel does not apply to such an expression of opinion.*

Brant *vs.* Virginia Coal Co., 93 U. S., 326, 35–6–7.

Ketchum *vs.* Duncan, 96 U. S., 659, 66–67.

From the foregoing facts and authorities we draw the following conclusions:

1st. That no representations were made.

2d. If any were made, it was by the St. Paul and Pacific and the First Division Company, and not the Northern Pacific Company.

3d. That the estimates relied upon by appellants' counsel as representations were mere expressions of opinion as to the quantity of land the company would acquire by the location and construction of its road.

4th. That the said original bondholders were not misled thereby.

5th. That they did not rely thereon.

6th. That the Northern Pacific Company's claim to the lands involved in this controversy was disclosed by its granting act, and the records in the Interior Department, and that said bondholders had notice thereof.

7th. That the Manitoba Company (the only one of appellants now having any interest in this proceeding) purchased, *pendente lite*, the right of the St. Paul and Pacific Company to its granted lands only at a foreclosure sale where the rule of *caveat emptor* appplies, and has no interest in the question of the diversion of a part of the proceeds of said bonds, or the original rights and equities between the bondholders, the St. Paul and Pacific Company and the First Division Company, or any other company.

The appellee submits, with confidence, that the decree entered in the Court below ought to be, and will be affirmed.

JAMES MCNAUGHT
AND H. J.
A. H. GARLAND & MAY,
Of Counsel for Appellee.